

**COCHISE COUNTY
PROCUREMENT DEPARTMENT**

**ON BEHALF OF
JUSTICE COURT 6**



**INVITATION FOR BIDS No. 14-29-FAC-03
For
COURTHOUSE ADDITION AND ALTERATION
JP 6 – BOWIE, AZ**

**Job Walk Date:
FEBRUARY 19, 2014 AT 1:00 P.M. LOCAL TIME**

**Submittal Deadline:
MARCH 12, 2014 AT 4:00 P.M. LOCAL TIME**

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ATTACHMENTS:

SAMPLE CONTRACT	Attachment A
OFFER COVER LETTER	Attachment B *
BID SUBMITTAL	Attachment C *
BID BOND and CERTIFICATE OF INSURABILITY	Attachment D *
LIST OF SUBCONTRACTORS & SUPPLIERS	Attachment E *
PERFORMANCE BOND, LABOR & MATERIAL BOND	Attachment F
WEEKLY CONSTRUCTION SCHEDULE, SAMPLE FORM	Attachment G
PLANS/SCOPE AND SPECIFICATIONS.....	Attachment H

All attachments noted with an asterisk * must be returned with your submittal.

Note: The Performance Bond, Labor & Material Bond and Certificate of Insurance shall to be submitted within ten (10) days after notification of award by the County, Board of Supervisors.

2.1 INTRODUCTION

Notice is hereby given that sealed competitive bids will be accepted from qualified Contractors, Firms and Individuals registered with the Arizona Registrar of Contractors to provide all material, labor, equipment and supervision for the construction of a COURTHOUSE ADDITION AND ALTERATION as per the technical specifications and plan set provided in this solicitation. This project is located in Bowie, Arizona.

A job walk will be held on February 19, 2014 at 1:00 P.M. local time, Contractors should meet at Justice Court 6 located at 201 N. Central Avenue, Bowie, Arizona 85605. Contractors are strongly encouraged to attend this job walk to become familiar with the scope of work and any conditions that may affect their performance and prices quoted. The submission of a bid shall be conclusive evidence the Contractor is satisfied as to the conditions to be encountered, quality of work to be performed and quantity of materials to be furnished as per the requirements of the Contract Documents. Any doubts as to the requirements of this solicitation or any omission or discrepancy should be presented to the County at this conference. The County will then determine the appropriate action necessary, if any, and issue a written addendum to the solicitation. Oral statements or instructions at the job walk will not constitute an addendum to this solicitation. Individuals with special accessibility needs may contact Chris Mullinax, Safety/Loss Control Analyst at (520)432-9720, fax (520)432-9716, TDD (520)432-9297.

Each bid submittal shall be accompanied by a Bid Bond in the form of a certified check, cashier's check, or by a bid bond executed by a company authorized to do business in the State of Arizona, made payable to the County of Cochise in an amount not less than ten percent (10%) of the maximum amount of the bid. The check or bid bond will be given as a guarantee of intent of the Bidder to enter into a Contract should the bid be accepted or as liquidated damages to the aforementioned in the event of failure or refusal of the Bidder to enter into a Contract. The check or bid bond will be returned to the unsuccessful Bidders upon award of the Contract and to the successful Bidder upon the execution of the Contract and receipt of any required performance and payment bonds.

The Cochise County Board of Supervisors reserves the right to accept or reject any offer or any part thereof; to defer action on the offers; to reject all offers; to waive any informality in the qualification procedures. Deviations from the scope of work, terms and conditions may be considered at the option of the Board of Supervisors.

Direct all inquiries concerning this solicitation to: Terry Rutan, Senior Buyer, Cochise County Procurement Department, 1415 Melody Lane, Bldg C, Bisbee, Arizona 85603, phone 520-432-8392 or trutan@cochise.az.gov.

It is the Bidders responsibility register with Public Purchase in order to receive automatic email notification of addenda to this solicitation. All addenda will be posted on the Public Purchase website. Bidders can register with Public Purchase through the County Procurement website at www.cochise.az.gov/departments/procurement/vendor registration. Failure of the bidder to obtain this information shall not relieve him/her of the requirements contained therein. Additionally, failure of bidder to return signed addenda(s) when required, may be cause for the rejection of the bid.

Bidders are advised to read the **Sample Contract – (Attachment “A”)** thoroughly as the selected Bidder will be required to comply with all of the requirements contained therein. The selected Bidder shall be required to enter into a written agreement in essentially the same form as shown in the **Sample Contract**, which shall be the basic form used to develop the final agreement. The Bidder's signature on the **Offer Cover Letter (Attachment “B”)** acknowledges that the Bidder is willing to enter into an agreement if awarded the agreement.

2.0 SUBMITTAL INSTRUCTIONS:

- 2.1 Bidders shall submit **one (1) original and one copy** of your submittal no later than the time and date indicated on the cover page of this IFB. All submittals should be fully completed and delivered in a sealed envelope or package and be **clearly marked** with the IFB number and title of the solicitation on the outside of the envelope/package. **Sealed bids must be in the actual possession of the Purchasing Department at the location indicated, on or prior to the exact time and date indicated.**

2.0 SUBMITTAL INSTRUCTIONS: (continued)

- 2.2 Submittals shall be delivered to: **Cochise County, Procurement Department
1415 Melody Lane, Bldg. C
Bisbee, AZ 85603**
- 2.3 Submittals delivered to a location other than the address listed above will not be considered duly delivered or timely. The County of Cochise shall not be responsible for re-routing submittals delivered to a person or location other than that specified above.
- 2.4 The name and address of the firm/individual submitting the Bid/Proposal must be clearly indicated on the outside of the envelope or package containing the offer. **Bids/offers that are not in sealed envelopes or packages WILL NOT BE ACCEPTED**
- 2.5 Faxed and/or e-mailed submittals shall not be accepted.
- Late Bids/Offers** received after the exact bid due date and time shall be rejected. The bid/proposal will be returned unopened to the Bidder/Offeror.
- The Official Time Clock is located in the Procurement Department. All times referred to in this solicitation shall be determined by this clock.
- Overnight Delivery Services** do not deliver overnight to the Bisbee area. Shipment of bids/offers should be made with adequate allowances for slow delivery time.
- 2.8 In order for your submittal to be considered complete **return only the attachments listed below.**
- | | | |
|----|---|--------------|
| 1. | Offer Cover Letter | Attachment B |
| 2. | Bid Submittal | Attachment C |
| 3. | Bid Bond & Certificate of Insurability | Attachment D |
| 4. | List of subcontractor and suppliers | Attachment E |
| 5. | An estimated time line for project completion from the notice to proceed shall be included with your submittal. | |
- 2.9 The County reserves the right to waive minor defects and/or irregularities in the submittal, and shall be the sole judge of the materiality of any such defect or irregularity.
- 2.10 All costs associated with the preparation of the submittal shall be borne by the offeror.
- 2.11 All submittals shall remain firm and fixed for a period of sixty (60) days following the closing date for the receipt of submittals.
- 2.12 All submittals, whether selected or rejected, shall become the property of Cochise County and will not be returned.
- 2.13 The Purchasing Department will not provide the use of telephones or any packaging materials for the use of the bidder/offeror in the preparation or delivery of the bid/offer.
- 2.14 **Timeliness:**
The Senior Buyer shall receive any inquiry at least seven (7) days before the bid/offer due date and time. Failure to meet this time requirement may result in the inquiry not being answered.

3.0 GENERAL INSTRUCTIONS TO BIDDERS

- 3.1 **Definition of Key Words Used in the Invitation for Bids/Request for Proposals:**
- a. **County:** Cochise County, Arizona
- b. **Contractor:** The individual, partnership, or corporation who, as a result of the competitive bidding/proposal process, is awarded this Contract by Cochise County

3.0 GENERAL INSTRUCTIONS TO BIDDERS (continued)

- c. **Contract:** The legal agreement executed between Cochise County, Arizona, and the Contractor, specifically Cochise County Contract No. IFB 14-29-FAC-03 –COURTHOUSE ADDITION AND ALTERATION
- d. **May:** Indicates something that is not mandatory but permissible
- e. **Shall, Must:** Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of the bid/proposal as non-responsive.
- f. **Should:** Indicates something that is recommended but not mandatory. If the Bidder/Proposer fails to provide recommended information, the County may, at its sole option, ask the Bidder/Proposer to provide the information or evaluate the bid/proposal without the information.
- g. **Will:** Indicates an expression of intent, but is not binding
- h. **Solicitation:** An Invitation for Bids (“IFB”) or Request for Proposals (“RFP”)
- i. **Responsible Bidder or Offeror:** Individual, partnership, or corporation who has the capability to perform the Contract requirements and the integrity and reliability that will assure good faith performance.
- j. **Responsive Bidder or Offeror:** Individual, partnership, or corporation who submits a bid or proposal that conforms in all material respects to the Invitation for Bids or Request for Proposals.

3.2 Preparation of Bid/Offer:

It is the responsibility of all bidders/offerors to thoroughly examine the entire Invitation for Bids package and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting a bid/proposal. Negligence in preparing a bid/proposal confers no right of withdrawal after due time and date.

3.3 Form; No Facsimile or Telegraphic Offers:

A bid/offer shall be submitted on the forms provided in this solicitation or photocopies of those forms. A facsimile, telegraphic or Mailgram bid/offer shall be rejected.

3.4 Typed or Ink; Corrections:

The bid/offer must be typed or in ink. The person signing the bid/offer must initial erasures, interlineations or other modifications in the bid/offer in ink. Modifications will not be permitted after bids/offers have been opened.

3.5 Bid/Proposal Form; Original Signatures:

The Bid Form/Proposal Form within the solicitation must be submitted with the bid/offer and must include an original signature by a person authorized to sign the bid/offer. The signature shall signify the bidder/offeror's intent to be bound by the bid/offer and the terms of the solicitation. Failure to submit an original signature with the bid/offer shall result in rejection of the bid/offer.

3.6 Exceptions to Terms and Conditions:

A bid/offer that takes exception to a material requirement of any part of the solicitation, including a material term and condition, shall be rejected.

3.7 Inquiries:

All inquiries related to this solicitation shall be directed to the Senior Buyer identified in the solicitation unless otherwise stated in the solicitation.

3.8 Submission of Inquiries:

The Senior Buyer or the contact person identified in the solicitation may require that an inquiry be submitted in writing. Any inquiry related to a solicitation shall refer to the appropriate solicitation number, page, and paragraph. Do not place the solicitation number on the outside of the envelope containing the inquiry since it may be identified as an offer and not be opened until after the bid/offer due date and time.

3.0 GENERAL INSTRUCTIONS TO BIDDERS (continued)

3.9 Timeliness:

The Senior Buyer shall receive any inquiry at least seven (7) days before the bid/offer due date and time. Failure to meet this time requirement may result in the inquiry not being answered.

3.10 No Right to Rely on Verbal Responses:

Any inquiry that raises material issues and results in changes to the solicitation shall be answered solely through a written solicitation addendum. A Bidder/Offeror may not rely on verbal responses to its inquiries.

3.11 Addenda:

Each solicitation addendum shall be signed with an original signature by the person signing the bid/offer, and shall be submitted no later than the bid/offer due date and time. Failure to return a signed copy of a material solicitation addendum shall result in rejection of the bid/offer.

3.12 Bid/Offer Amendment or Withdrawal:

A bid/offer may not be amended or withdrawn after the offer due date and time.

3.13 Public Record:

Under applicable law, all bids/offers are public records and must be retained by the County. Bids are public records upon opening. Offers are open to public inspection after Contract award. If a bidder/offeror believes that information in its offer should remain confidential, it shall stamp as confidential that information and submit a statement with its bid/offer detailing the reasons why that information should not be disclosed. The County shall make a final determination whether or not the information is confidential. If it is determined that the information may be disclosed, the bidder/offeror shall be informed in writing of such determination.

3.14 Offer Acceptance Period:

In order to allow for an adequate evaluation, the County requires an offer in response to this solicitation to be valid and irrevocable for sixty (60) days after the opening time and date, unless otherwise stated in the solicitation.

3.15 Taxes:

The County is subject to State of Arizona and other Government Agency taxes imposed within Arizona. State of Arizona Use Tax will be paid directly to the state when orders are placed with out-of-state vendors. No taxes other than those imposed within the State of Arizona will be paid in addition to the bid/offer price.

3.16 Cost of Bid/Offer Preparation:

The County will not reimburse any Bidder/Offeror the cost of responding to a solicitation.

3.17 Waiver and Rejection Rights:

Notwithstanding any other provision of the solicitation, the County reserves the right to:

- Waive any immaterial defect or informality;
- Reject any and all bids/offers or portions thereof; or
- Cancel a solicitation

3.18 Contract Inception:

A response to a solicitation is an offer to Contract with the County based upon the terms, conditions and specifications contained in the County's solicitation does not become a Contract unless and until it is awarded by the Board of Supervisors. A Contract has its inception in the award document, eliminating a formal signing of a separate Contract. For that reason, all of the Terms and Conditions of the procurement Contract are contained in the solicitation, unless any of the Terms and Conditions are modified by a solicitation addendum, a Contract amendment, or by mutually agreed upon terms and conditions in the Contract documents.

3.0 GENERAL INSTRUCTIONS TO BIDDERS (continued)

4.0 Order of Precedence:

In the event of a conflict in the provision of this solicitation, the following shall prevail:

- Special Terms and Conditions
- General Terms and Conditions
- Scope of Work
- Documents referenced in the solicitation
- General Instructions to Bidders/Offerors

4.0 SCOPE OF WORK

GENERAL

All work shall be completed as per the plans and technical specifications incorporated into the plans (Attachment H). Work associated with this project shall be completed within one hundred twenty (120) calendar days of the written Notice to Proceed. It shall be the Contractor's responsibility to complete the work specified and supply any incidental services or material necessary to make the work complete and perfect in all respects and ready for operation. Any material or work not shown on the drawings or mentioned in the specifications, or vice versa, or any incidentals necessary for the addition/alteration of the court building to operate as to the intent of these specifications, even if not particularly specified, shall be included in the bid price and furnished, delivered, and installed by the Contractor without additional expense to Cochise County.

BUILDING PERMIT FEES

It shall be the Bidders responsibility to obtain and pay for all permits.

EXPLANATION AND MODIFICATIONS

The work shall also conform to such drawings, including explanation of details or minor modifications, as may be furnished from time to time during construction, including such minor modifications as the County Project Manager may consider necessary on account of conditions found during the prosecution of the work.

Any quantities appearing in the Bid Submittal Form and the Construction Drawings are approximate and are to only be used for the comparison of bids. Payment to the Contractor will be only for the actual quantities of work performed and accepted or materials furnished in accordance with the contract at the unit bid price in the proposal. The Contractor shall verify actual quantities prior to construction and notify the County Project Manager of any deviation, either exceeding or under the bid amount. No additional payment beyond the unit bid amount will be paid to the Contractor if quantity deviations are not identified prior to work or placement of materials.

In the event of any substantial discrepancies between the Construction Drawings and Specifications, the decision of the County Project Manager and the Construction Drawings shall prevail. The written dimensions of the Construction Drawings are presumed to be correct, but the Contractor is required to check carefully all dimensions and quantities before beginning work thereon. Should any errors or omissions be discovered, the County Project Manager shall be so advised and the proper corrections made. Any such adjustments made by the Contractor without prior approval shall be at his own risk, and the settlement of any complications arising from such adjustments shall be carefully observed by the Contractor and are a part of the Contract.

WORK SCHEDULE

Prior to commencement of the work, the Contractor shall prepare a detailed project work schedule, which shall be submitted and subject to approval by the County Project Manager. The approved work schedule shall not be subject to change without the written consent of the County Project Manager. Said time/work

4.0 SCOPE OF WORK (continued)

schedule shall be submitted by the Contractor to the County Project Manager for review and approval prior to issuance of the Notice to Proceed. An updated overall project schedule shall be submitted **with monthly pay requests** (the first of each month) until the project is completed. **Contractor pay requests will not be processed if submittal does not include an updated overall project schedule.**

In addition to the overall project work schedule, the Contractor shall provide a weekly schedule of his general operations, testing, and inspection needs for the next week's operation. A sample weekly construction schedule form is provided; see Attachment G.

Any changes required in the approved weekly operations and work schedule shall be promptly brought to the attention of the County Project Manager in writing for approval before commencement of work. Information regarding the change shall include nature, location, type, extent of change, and the reasons for not following approved operations and work schedule.

OSHA REGULATIONS

The Contractor is required to meet all applicable regulations of the Occupational Safety and Health Administration. The Contractor shall bear full responsibility for compliance with all applicable Federal, State, and local laws and regulations.

5.0 GENERAL TERMS AND CONDITIONS

5.1 Certification:

By signature on the Offer Cover Letter of this solicitation the Bidder/Offeror certifies:

- a. The submission of the bid/offer did not involve collusion or other anti-competitive practices.
- b. The Bidder/Offeror shall not discriminate against any employee, or applicant for employment in violation of Federal Executive Order 11246 and State Executive Order 75.5 and A.R.S. §31-1461 et. seq.
- c. The Bidder/Offeror has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted bid/offer. Failure to provide a valid signature affirming the stipulations required by this clause shall result in the rejection of the offer. Signing the bid/offer with a false statement shall void the bid/offer, any resulting Contract and may be subject to legal remedies provided by law.
- d. The Bidder/Offeror agrees to promote and offer to the County only those materials and/or services as stated in and allowed for under resultant Contract(s) as County Contract items.

5.2 Gratuities:

The County may, by written notice to the Contractor, cancel this Contract if it is found by the County that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the County with a view toward securing a Contract, securing favorable treatment with respect to the awarding, amending, or the making of any determinations with respect to the performing of such Contract. In the event this Contract is canceled by the County pursuant to this provision, the County shall be entitled, in addition to any other rights and remedies, to recover or to withhold from the Contractor the amount of the gratuity. Paying the expense of normal business meals which are generally made available to eligible County Government customers shall not be prohibited by this paragraph.

5.3 Applicable Law:

This Contract shall be governed by, and the County and Contractor shall have all remedies afforded each by the Uniform Commercial Code, as adopted in the State of Arizona, except as otherwise provided in this Contract or in statutes pertaining specifically to the State. The Law of the State of Arizona shall govern this Contract, and suits pertaining to this Contract shall be brought only in Federal or State Courts in the State of Arizona.

5.4 Arizona Procurement Code:

The Arizona Procurement Code (A.R.S. Title 41, Chapter 23) and the Cochise County Purchasing Policy are a part of this document as if fully set forth herein.

5.14 GENERAL TERMS AND CONDITIONS (continued)

5.5 Legal Remedies:

All claims and controversies shall be subject to A.R.S. §12-1518 et. Al.

5.14 Contract:

The Contract shall be based upon the solicitation issued by the County and bid/offer submitted by the Contractor in response to the solicitation. The bid/offer shall substantially conform to the terms; conditions and other requirements set for with the rest of the solicitation. The County reserves the right to clarify any contractual terms with the concurrence of the Contractor. However, any substantial non-conformity in the bid/offer shall be deemed non-responsive and the offer rejected. The Contract shall contain the entire agreement between the County of Cochise and the Contractor relating to this requirement and shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders or master agreements in any form.

5.7 Contract Amendments:

This Contract shall be modified only by a written contract amendment signed by persons duly authorized to enter into contracts on behalf of the County and the Contractor.

5.8 Provisions Required by Law:

Each and every provision of Law and any clause required by Law to be in the Contract shall be read and enforced as though it were included herein. And if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion or correction.

5.9 Termination by the County:

See 9.2.1 of Sample Contract (**Attachment A**).

5.14 Severability:

The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract that may remain in effect without the invalid provision or application.

5.14 Relationship of Parties:

It is clearly understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever. The Contractor is advised that taxes or Social Security payments shall not be withheld from a County payment issued hereunder and that Contractor should make arrangements to directly such expenses, if any.

5.14 Interpretation – Parol Evidence:

This Contract is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object. Whenever a term defined by the Cochise County Purchasing Policy is used in this Contract, the definition contained in the Policy shall control.

5.14 Assignment – Delegation:

The Contractor without prior written permission of the County shall assign no right or interest in this Contract, and no delegation of any duty of the Contractor shall be made without prior written permission of the County. The County shall not unreasonably withhold approval and shall notify the Contractor of the County's position within 15 days of receipt of written notice by the Contractor.

5.14 Subcontracts:

The Contractor shall enter into no subcontract with any other party to furnish any of the material, service or construction specified herein without the advance written approval of the County. All subcontracts shall comply with Federal and State Laws and Regulations which are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth herein which shall apply with equal force to the subcontract, as if the subcontractor were the Contractor referred to herein. The Contractor is responsible for Contract performance whether or not subcontractors are used. The County shall not unreasonably withhold approval and shall notify the Contractor of the County's position within 15 days of receipt of written notice by the Contractor.

5.0 GENERAL TERMS AND CONDITIONS (continued)

5.15 Rights and Remedies:

No provision in this document or in the Contractor's offer shall be construed, expressly or by implication as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim of default or breach of Contract. The failure of either party to insist upon the strict performance of any term or condition of the Contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, or the acceptance of materials or services, or the payment for materials or services, shall not release either party from any responsibilities or obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.

5.16 Protests and Disputes:

A protest shall comply with and be resolved according to the Cochise County Procurement Policy, Section Fifteen (15). Any interested party may protest a solicitation, a proposed award or the actual award of a County contract. All written protests will be reviewed and receive a written response. Protests may be transmitted by facsimile machine.

Protestors should first contact the Procurement by telephone, with their questions regarding a solicitation, award or proposed award as the first step in the protest process. Frequently, the questions or problems can be resolved in this manner. Receipt of a verbal response does not preclude filing a formal written protest.

- Protests regarding alleged improprieties in a solicitation that are apparent before the bid opening shall be filed five (5) working days before the bid opening date.
- Protests regarding materials included by addendum and received by the protestor less than five (5) working days before the bid opening shall be submitted with the bid.
- Protests regarding a proposed award shall be submitted as soon as known by the date of award.
- Protests regarding the actual award of a contract shall be filed within five (5) working days of the contract award, or within five (5) working days of the mailing of the notice of award, whichever is later.

A formal protest must be in the form of a letter from the protestor to the Procurement Director. It must include:

- The name, address, and telephone number of the protestor and the original signature of the protestor or its representative;
- The name and number of the solicitation that is being protested;
- A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
- The form of relief requested.

The Procurement Director will respond to all disputes within fourteen (14) working days of the receipt of the dispute. The response shall contain an explanation of the basis for the decision. The time period for this response may be extended for good cause for up to thirty (30) calendar days. The disputant shall be notified in writing that the time for issuance of a response has been extended.

5.17 Warranties:

Contractor warrants that all material, service or construction delivered under this Contract shall conform to the specifications of this Contract. Mere receipt of shipment of the material, service, or construction specified and any inspection incidental thereto by the County shall not alter or affect the obligations of the Contractor or the rights of the County under the foregoing warranties. Additional warranty requirement may be set forth in this document.

5.18 Overcharges by Antitrust Violations:

The County maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to the County any and all claims for such overcharges as to the goods or services used to fulfill the Contract.

5.0 GENERAL TERMS AND CONDITIONS (continued)

5.19 Force Majeure:

Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of Force Majeure. The "Force Majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, Force Majeure includes acts of God; acts of the public enemy; war; riots; strikes; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts or failures or refusal to act by government authority; and other similar occurrences beyond the control of the party declaring Force Majeure which such party is unable to prevent by exercising reasonable diligence.

The Force Majeure shall be deemed to commence when the party declaring Force Majeure notifies the other party of the existence of the Force Majeure and shall be deemed to continue as long as the results or effects of the Force Majeure prevent the party from resuming performance in accordance with this agreement. Force Majeure shall not include the following occurrences:

- Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market.
- Late performance by a subcontractor unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by Force Majeure.

If either party is delayed at any time in the progress of the work by Force Majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in such notice.

Such notice shall be hand delivered or mailed certified return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

5.20 Right to Assurance:

Whenever one party to this Contract in good faith has reason to question the other party's intent to perform, he may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

5.21 Records:

Pursuant to provisions of A.R.S. Title 35, Chapter 1, Article 6, §35-214 and §35-215, each Contractor shall retain, and shall contractually require each subcontractor to retain, all books, accounts, reports, files and other records relating to the acquisition and performance of the Contract for a period of five (5) years after the completion of the Contract. All such documents shall be subject to inspection and audit at reasonable times. Upon request, a legible copy of any or all such documents shall be produced for the County.

5.22 Advertising:

Contractor shall not advertise or publish information concerning this Contract without prior written consent of the County. The County shall not unreasonably withhold permission.

5.23 Inspection:

All material, service or construction are subject to final inspection and acceptance by the County. Material, service or construction failing to conform to the specifications of this Contract shall be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Compliance shall conform to the cancellation clause set forth in this document.

5.24 Exclusive Possession:

All services, information, computer program elements, reports and other deliverables which may be created under this Contract are the sole property of the County of Cochise and shall not be used or released by the Contractor or any other person except with prior written permission of the County.

5.25 Title and Risk of Loss:

The title and risk of loss of material or service shall not pass to the County until the County actually receives the material or service at the point of delivery, unless otherwise provided within this Contract.

5.0 GENERAL TERMS AND CONDITIONS (continued)

5.26 No Replacement of Defective Tender:

Every tender of materials must fully comply with all provisions of the Contract. If a tender is made which does not fully conform, this shall constitute a breach and Contractor shall not have the right to substitute a conforming tender. Compliance shall conform to the cancellation clause set forth within this document.

5.27 Default in One Installment to Constitute Total Breach:

Contractor shall deliver conforming materials in each installment or lot of this Contract and may not substitute nonconforming materials. Delivery of nonconforming materials or a default of any nature, at the option of the County, shall constitute a breach of the Contract as a whole. Compliance shall conform to the cancellation clause set forth within this document.

5.28 Shipment Under Reservation Prohibited:

Contractor is not authorized to ship materials under reservation and no tender of a Bill of Lading shall operate as a tender of materials. Compliance shall conform to the cancellation clause set forth within this document.

5.29 Liens:

All goods, services and other deliverables supplied to the County under this Contract shall be free of all Liens other than the security interest held by the Contractor until payment in full is made by the County. Upon request of the County, the Contractor shall provide a formal release of all Liens.

5.30 Payment:

A separate invoice shall be issued for each shipment of material or service performed, and no payment shall be issued prior to receipt of material, service or construction and correct invoice. Payment shall be subject to the provision of A.R.S. Title 35.

5.31 Licenses:

Contractor shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by the Contractor as applicable to the Contract.

5.32 Preparation of Specifications by Persons Other than County Personnel:

All specifications shall seek to promote overall economy for the purposes intended and encourage competition and not be unduly restrictive in satisfying the County's needs in accordance with A.R.S. Chapter 23, Article 4. No person preparing specifications shall receive any direct or indirect benefit from the utilization of specifications, other than fees paid for the preparation of specifications.

5.33 Cost of Bid Preparation:

The County shall not reimburse the cost of developing, presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner.

5.34 Public Record:

All bids and proposals submitted in response to this solicitation shall become the property of the County and shall become a matter of Public Record available for review, subsequent to the award notification as provided by the Cochise County Purchasing Policy.

5.35 Payment by the County:

Each payment obligation of the County created hereby is conditioned upon the availability of County, State, and Federal funds that are appropriated or allocated for the payment of such an obligation. If funds are not allocated by the County and available for the continuance of services herein contemplated, the contract period for the service may be terminated by the County at the end of the period for which funds are available. The County shall notify the Contractor at the earliest possible time which service will or may be affected by a shortage of funds. No penalty shall accrue to the County in the event this provision is exercised, and the County shall not be obligated or liable for any future payments due or for any damages as a result of termination under this paragraph.

5.36 Independent Contractor:

The contractor shall be legally considered an independent contractor and neither the contractor nor its employees shall, under any circumstances, be considered servants or agents of Cochise County; and the County shall be at no time legally responsible for any negligence or other wrongdoing by the contractor, its servants or agents.

5.0 GENERAL TERMS AND CONDITIONS (continued)

- The County shall not withhold from the contract payments to the contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the contractor. Further the County shall not provide to the contractor any insurance coverage or other benefits, including Workers Compensation, normally provided by the County for its employees.

5.37 Legal Arizona Workers Act Compliance:

Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Contractor's employment of its employees, and with the requirements of A.R.S. § 23-214(A) (together the "State and Federal Immigration Laws"). The Contractor shall further ensure that each subcontractor who performs any work for the Contractor under this contract likewise complies with the State and Federal Immigration Laws.

The County shall have the right at any time to inspect the books and records of the Contractor and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of the Contractor's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this contract subjecting the Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract

is suspended or terminated as a result, the Contractor shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, (subject to County approval if MWBE preferences apply) as soon as possible so as not to delay project completion.

The Contractor shall advise each subcontractor of the County's rights, and the subcontractor's obligations, under this Section by including a provision in each subcontract substantially in the following form:

"The Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal laws applicable to the Subcontractor's employees and with the requirements of A.R.S. §23-214(A). The Subcontractor further agrees that the County may inspect the Subcontractor's books and records to insure that the Subcontractor is in compliance with these requirements. Any breach of this paragraph by the Subcontractor will be deemed to be a material breach of this contract subjecting the Subcontractor to penalties up to and including suspension or termination of this contract."

Any additional costs attributable directly or indirectly to remedial action under this Section shall be responsibility of the Contractor. In the event that remedial action under this Section results in delay to one or more tasks on the critical path of the Contractor's approved construction or critical milestones schedule, such period of delay shall be deemed excusable delay for which the Contractor shall be entitled to an extension of time, but not costs.

5.38 Foreign Investment and Business Operations:

By signing this contract the Contractor certifies that it does not have scrutinized business operations in Iran and Sudan as required by A.R.S. sec. 35-397.

6.0 SPECIAL TERMS AND CONDITIONS

6.1 Bid Opening:

Bids/proposals shall be opened at the time and place designated on the cover page of this document and read publicly and recorded.

6.2 Offer Acceptance Period:

In order to allow for an adequate evaluation, the County requires a bid/offer in response to this solicitation to be valid and irrevocable for sixty (60) days after the bid opening date.

6.3 Award of the Contract:

The Board of Supervisors will award the Contract to the lowest, responsive and responsible Bidder, whose bid is most advantageous to the County.

6.4 Effective Date of Contract:

Approval of the award by the Board of Supervisors, countersigned by the Clerk of the Board are the conditions precedent to the effectiveness of this Contract.

6.0 SPECIAL TERMS AND CONDITIONS (continued)

Upon Award of the Contract:

The successful Bidder will sign and file with the County, within ten (10) days after notification of Award, all documents necessary to the successful execution of the Contract, to include contract documents, Form of Agreement, and insurance certificates and bonds as required.

Confidential Information:

If a person believes that any portion of proposal, bid, offer, specification, protest, or correspondence contains information that should be withheld, the Contracts Administrator should be so advised in writing.

The County shall review all requests for confidentiality and provide a written determination. If the confidentiality request is denied, such information shall be disclosed as public information unless the person utilizes the "Protest" provision listed elsewhere in this solicitation. An entire response to a solicitation shall not be considered confidential material.

Suspension or Debarment Status:

If the firm, business or person submitting this bid or offer has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity with any Federal, State or Local Government, the Bidder or Offeror must include a letter with its bid or offer setting forth the name and address of the governmental unit, the effective date of the suspension or debarment. Failure to supply the letter or to disclose in the letter all pertinent information regarding a suspension or debarment shall result in rejection of the bid or offer or cancellation of a Contract. The County may also exercise any other remedy available by law.

6.8 Failure to Deliver:

In the event of failure of the Contractor to deliver goods/materials/equipment and/or services in accordance with the contract terms and conditions, the County, after due oral or written notice, may procure the goods/materials/equipment and/or services from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the County may have.

Indemnification:

To the fullest extent permitted by law, Contractor agrees to indemnify, defend, and hold harmless Cochise County, a body politic and corporate of the State of Arizona, its board members, officers, employees, agents and other officials from all claims, damages, losses, and expenses, including but not limited to attorney's fees, court costs, or other alternative dispute resolution costs arising out of, resulting from, or otherwise but for the performance or furnishing of work or services under this Agreement, provided that any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, death, or personal injury, or property damage, including the loss of use or diminution in value resulting there from; but only to the extent caused in whole or in part by the actual or alleged negligent acts, errors, or omissions of Contractor, or anyone for whose acts Contractor may be liable. Cochise County reserves the right, but not the obligation, to participate in defense without relieving Contractor of any obligation hereunder.

The amount and type of insurance required shall not in any way be construed as limiting the scope of the indemnification set forth above.

Insurance Requirements:

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.

The County in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, his agents, representatives, employees, or subcontractors. Contractor is free to purchase such additional insurance as may be determined necessary.

- A. **MINIMUM SCOPE AND LIMITS OF INSURANCE** – Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

6.0 SPECIAL TERMS AND CONDITIONS (continued)

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, broad form contractual liability and XCU coverage.

- | | |
|---|-------------|
| • General Aggregate | \$2,000,000 |
| • Products – Completed Operations Aggregate | \$1,000,000 |
| • Personal and Advertising Injury | \$1,000,000 |
| • Each Occurrence | \$1,000,000 |

- a. The policy shall be endorsed to include the following additional insured language: "The County of Cochise shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including completed operations".

2. Automobile Liability

Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$1,000,000
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- a. The policy shall be endorsed to include the following additional insured language: "The County of Cochise shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor".

3. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

- a. This requirement shall not apply when a contractor or subcontractor is exempt under A.R.S. 23-901, **AND** when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

- B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the County of Cochise is named as an additional insured, the County of Cochise shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

- C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the County, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to the Cochise County Procurement Department, attention Terry Rutan, Senior Buyer, 1415 Melody Lane, Bldg. C, Bisbee, AZ 85603.

- D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The County in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

6.0 SPECIAL TERMS AND CONDITIONS (continued)

- E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the County with certificates of insurance (ACORD form or equivalent approved by the County) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the County before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be sent directly to the Cochise County Procurement Department, attention Terry Rutan, Senior Buyer, 1415 Melody Lane, Bldg. C, Bisbee, AZ 85603. The County project/contract number and project description shall be noted on the certificate of insurance.

The County reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE COUNTY'S RISK MANAGEMENT DIVISION.**

- F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as additional insured's under its policies **or** subcontractors shall maintain separate insurance as determined by the Contractor, however, subcontractor's limits of liability shall not be less than \$1,000,000 per occurrence / \$2,000,000 aggregate.
- G. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by the Contracting Agency in consultation with the Risk Management Department, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

6.15 Compensation and Method of Payment:

In consideration of the performance of the services described in the specifications/scope of work, the County will pay the Contractor the sum or amounts as set forth herein, and the Contractor will charge the County only in accordance with those same amounts.

- The County will pay the Contractor within thirty(30) days following the receipt of itemized invoice(s) for the services rendered. No payment will be issued prior to receipt of material or service and correct invoice.

6.16 Non-exclusive Contract:

Any contract resulting from this solicitation will be awarded with the understanding and agreement that it is for the sole convenience of the County of Cochise. The County reserves the right to obtain like services from another source when necessary.

6.17 Bid Surety:

Each bid shall be accompanied by a certified check, cashier's check, or by a bid bond executed by a company authorized to do business in the State of Arizona, made payable to the County of Cochise in an amount not less than ten percent (10%) of the maximum amount of the bid. The check or bid bond will be given as a guarantee of intent of the Bidder to enter into a Contract should the bid be accepted or as liquidated damages to the aforementioned in the event of failure or refusal of the Bidder to enter into a Contract.

- The check or bid bond will be returned to the unsuccessful Bidders upon award of the contract and to the successful Bidder upon the execution of the Contract and receipt of any required performance and payment bonds.

6.18 Performance Surety:

A performance bond in the amount of one hundred percent (100%) of the bid will be required of the successful Bidder to ensure satisfactory completion of the work. The bond will be a corporate surety bond issued by a surety company authorized to do business in the state of Arizona.

6.19 Payment Surety:

A payment bond in the amount of one hundred percent (100%) of the bid will be required of the successful Bidder to guarantee payment of all persons who have and fulfill contracts with the contractor for performing labor or provide equipment or material in the performance of the work provided for in the Contract. The bond will be a corporate surety bond issued by a surety company authorized to do business in the state of Arizona.



COCHISE COUNTY PROCUREMENT DEPARTMENT

1415 Melody Lane, Building C, Bisbee, AZ 85603
Phone: (520) 432-8391 Fax: (520) 432-8397
Website: www.cochise.az.gov

CONTRACT FOR CONSTRUCTION SERVICES

COURTHOUSE ADDITION AND ALTERATION

Agreement No. IFB 14-29-FAC-03

This Contract is made and entered into this ____ day of, _____ 2014, by and between the County of Cochise, hereinafter referred to as the COUNTY, and Building Excellence, hereinafter referred to as the "Contractor".

I. SCOPE OF WORK

This Contract is for services described in the original solicitation IFB 14-29-FAC-03 shall be completed as per the plans and technical specifications incorporated therein.

II. COMPENSATION AND METHOD OF PAYMENT

In consideration of the performance of the services described in the Scope of Work, the County shall pay the Contractor the total lump sum of \$_____ for the base bid. The first payment application for mobilization will be \$_____. This Contract sum is subject to modifications only in the manner specified in the Contract.

The County will pay the Contractor following the submission of itemized invoices(s) for the services rendered. No payment shall be issued prior to receipt of material or service and correct invoice. Each itemized invoice must bear a written certification by an authorized County representative confirming the services for which payment is requested have been performed.

III. DURATION, TERMINATION, AND RENEWAL

Upon receipt of the County's Notice to Proceed, the Contractor shall have 120 (one hundred and twenty) calendar days to complete the services included in the Scope of Work, unless terminated, cancelled or extended as provided herein. The Contractor shall commence work only after receiving Notice to Proceed from an authorized County representative. The Contractor shall complete all work to the satisfaction of the County in accordance with the Scope of Services.

The County reserves the right to immediately terminate, with or without cause, the whole or any part of this Agreement due to failure of Contractor to carry out any term, promise, or condition of this Agreement. If this Agreement is terminated, the County shall be liable only for payment for services rendered and accepted material received by the County before the effective date of termination.

The County may, by written notice to the Contractor, cancel this agreement if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the County.

IV. ENFORCEMENT, LAWS AND ORDINANCES

This agreement shall be enforced under the laws of the State of Arizona. Contractor must comply with all applicable federal, state, and local laws, ordinances, and regulations. Contractor shall ensure payment of all taxes, licenses, permits, and other expenses of any nature associated with the provision of services herein. Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Contractor.

V. INDEPENDENT CONTRACTOR

It is clearly understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever. The Contractor is advised that taxes or social security payments shall not be withheld from a County payment issued hereunder and that Contractor should make arrangements to directly pay such expenses, if any.

The County will not provide any insurance coverage to the Contractor including Workmen's Compensation coverage.

VI. MODIFICATIONS

This Agreement may only be modified by a written amendment signed by persons duly authorized to enter into contracts on behalf of the County and the Contractor.

VII. WAIVER

The failure of either party of this Agreement to take affirmative action with respect to any conduct of the other which is in violation of the terms of this contract shall not be construed as a waiver thereof, or of any future breach or subsequent wrongful conduct.

VIII. INDEMNIFICATION

To the fullest extent permitted by law, Contractor agrees to indemnify, defend, and hold harmless Cochise County, a body politic and corporate of the State of Arizona, its board members, officers, employees, agents and other officials from all claims, damages, losses, and expenses, including but not limited to attorney's fees, court costs, or other alternative dispute resolution costs arising out of, resulting from, or otherwise but for the performance or furnishing of work or services under this Agreement, provided that any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, death, or personal injury, or property damage, including the loss of use or diminution in value resulting there from; but only to the extent caused in whole or in part by the actual or alleged negligent acts, errors, or omissions of Contractor, or anyone for whose acts Contractor may be liable. Cochise County reserves the right, but not the obligation, to participate in defense without relieving Contractor of any obligation hereunder.

The amount and type of insurance required shall not in any way be construed as limiting the scope of the indemnification set forth above.

IX. MISCELLANEOUS PROVISIONS

- A. No assignment of this Agreement or subcontract shall be made by the Contractor with any other party for furnishing any of the services herein contracted for without the advance written approval of the Procurement Department. All subcontracts shall comply with Federal and State laws and regulations which are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth herein which shall apply with equal force to the subcontract, as if the subcontractor were the contractor referred to herein. The Contractor is responsible for contract performance whether or not subcontractors are used.
- B. The Contractor shall establish and maintain procedures and controls that are acceptable to the County for the purpose of assuring that no information contained in its records or obtained from the County or from others in carrying out its functions under the contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the contract. Persons requesting such information must be referred to the County.
- C. All services, information, computer program elements, reports, and other deliverables which may have a potential patent or copyright value and which are created under this Agreement shall be the property of the County and shall not be used by the Contractor or any other person except with the prior written permission of the County.
- D. This Agreement is subject to the provisions of A.R.S. Sec. 38-511. The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and applicable federal regulations under the Act.

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GENERAL CONDITIONS OF THE AGREEMENT

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ARTICLE 1. DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

Architect/Engineer – the person licensed to practice architecture/engineering by the State of Arizona and who is identified as the Architect/Engineer of Record by affixing his/her seal upon the Contract plans, drawings, specifications and related documents. May be utilized to provide construction administration services.

Bonds – bid, performance and payment bonds and other instruments of security.

Change Order – a document approved by the County Contract Representative and which is signed by the Contractor and the County's Procurement Director or duly authorized designee and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time, issued on or after the effective date of the Contract.

County – means the County of Cochise, Arizona, a body politic and corporate of the State of Arizona.

County Contract Representative – is the County official administering the Contract for the County of Cochise.

Completion Time – the number of calendar days agreed to by the County and Contractor for completion of the Work, which may be revised by written Change Order.

Construction – is defined as the process of building, altering, repairing, improving or demolishing any public structure or building or other public improvements of any kind to any real public property.

Construction-Manager-At-Risk – is a project delivery method in which there is a separate contract for design services and a separate contract for construction services, with design and construction taking place in sequential or concurrent phases, and in which finance services, maintenance services, operations services and preconstruction services may be included.

Construction Services – means either of the following for construction-manager-at-risk, design-build and job-order-contracting project delivery methods:

- a) construction, excluding services, through the construction-manager-at-risk or job-order-contracting project delivery methods;
- b) a combination of construction and, as elected by the County, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services.

Contract – the written agreement and all associated attachments, drawings, addenda and change orders executed between the County and the Contractor covering the Work to be performed.

Contract Price – the amount payable by the County to the Contractor for satisfactory completion of the Work, and as specified in the Contract as may be amended by written Change Order, or, in the case of a job-order contract, in the Notice to Proceed.

Contractor – the person, firm or corporation with whom the County has entered into the Contract.

Design-Build – the process of entering into and managing a contract between the County and a contractor in which the Contractor agrees to both design and build a structure and in which design and construction services may be in sequential or concurrent phases, and which may include finance services, maintenance services, operations services, design services and preconstruction services.

Design Services – is defined as architect services, engineer services or landscape architect services.

Procurement Director – the person acting as Director of the County's Procurement Department and who has authority to award and revise County solicitations and contracts for construction, construction services, and construction-related services below \$50,000.00 as necessary.

Drawings – the graphic and pictorial portions of the contract, wherever located and whenever issued, showing the configuration, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

Estimate for Payment – a form furnished by the County or an approved form submitted by the Contractor in lieu of County furnished form, and is required to be used when submitting requests for payments for work actually performed and materials supplied during an agreed-to preceding period of time.

Field Order – a written order or directive issued by the County Contract Representative that orders minor changes in the Work.

Final Completion Date – the calendar date when the Work is one hundred percent (100%) complete as determined by the County.

Finance Services – is defined as financing services for the Work.

Guaranteed Maximum Price or GMP – means the sum of the maximum cost of the Work; the CM@Risk's Construction fee; general conditions fee; taxes, bonds, insurances costs; and bid contingency as proposed and approved pursuant to this Agreement. The approved GMP will be made part of this Agreement by executing an amendment or additional amendments for phased construction.

Job-Order-Contracting – a project delivery method in which the contract is a requirements contract for indefinite quantities of construction and in which specified job orders are issued during the contract and may include finance services, maintenance services, operations services, preconstruction services and design services.

Liquidated Damages – Liquidated damages will not be applicable to this solicitation.

Maintenance Services – is defined as routine maintenance, repair and replacement of existing facilities, structures, buildings or real property.

Notice to Proceed – a written notice given by the County to the Contractor fixing the date on which the Contract Time will commence to run and on which the Contractor shall start to perform the Contractor's obligations under the Contract. In the case of a job order, it may also contain the specifications exclusive to the job order as well as consideration for the Contractor.

Operations Services – is defined as routine operation of existing facilities, structures, buildings or real property.

Preconstruction Services – is defined as advice during the design stage of the Work.

Price Proposal – a form on which the County requires estimates or price proposals to be prepared and submitted for the Work or portions of the Work.

Procurement Officer – is the County official who conducts the solicitation process to secure a Contractor for the Work and who acts under the authority and direction of the County's Procurement Director and in accordance with the County of Cochise Procurement Code.

Public Inspector(s) – that person or persons provided by the public authorities having code jurisdiction and who perform day-to-day inspections of the Work for compliance with applicable codes.

Schedule of Values – a schedule submitted by the Contractor setting forth the values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the County Contract Representative may require. This schedule must be submitted before the Contractor submits its first application for progress payment and shall be used as a basis for reviewing and approving payments to the Contractor.

Shop Drawings – drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for the Contractor to illustrate, in detail, how some portion of the Work shall be fabricated and/or installed, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a supplier and submitted by the Contractor to illustrate material or equipment for some portion of the Work.

Specifications – those portions of the Contract, or Notice to Proceed if a Job Order, consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

Substantial Completion – a written declaration of the date upon which the County, in its sole discretion, determines the Work is substantially complete such that the County has beneficial use and/or occupancy. Upon substantial completion, the right of the County to assess liquidated damages for time after the date of substantial completion ceases, except as allowed for failure to meet final completion within thirty (30) days of substantial completion.

The County of Cochise Procurement Policy – in addition to applicable State statutes and applicable Federal regulations and requirements, the County ordinance that governs the construction services contracting process as well as contract administration processes including the resolution of contract claims, disputes and controversies.

The Work – the entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract, or, in the case of a job-order contract, within individual Notices to Proceed. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract. And/or Notice to Proceed, as appropriate.

ARTICLE 2. THE CONTRACT DOCUMENT INTENT AND EXECUTION

2.1 The Contract

2.1.1 The documents in the Contract include but are not limited to the solicitation contents and any addenda, drawings, change orders and approved Contractor submittals.

2.1.2 The Contract comprises the entire agreement between the County and the Contractor concerning the Work and supersedes any prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by an instrument in writing and fully executed by the authorized parties to the Contract.

2.2 Intent of the Contract

2.2.1 The intent of the Contract is to include all labor, materials, equipment, transportation and all other costs and expenses necessary for the proper execution and completion of the Work by the Contractor.

2.2.2 The Contract shall be construed in accordance with the laws of the State of Arizona, and all such laws regulating the construction of Public Works by the County are hereby incorporated herein by reference and made a part hereof.

2.2.3 Materials or work described in words, which have a well-known technical or trade meaning, shall be held to refer to such recognized standards.

2.2.4 The organization of the Contract into divisions, sections or articles is merely for the purpose of convenient reference, and neither the headings nor divisions shall have any legal or Contractual significance and shall not control the division of the Work by the Contractor among the various subcontractor or trades.

2.2.5 The Contractor shall obtain all required County permits in addition to any and all ADOT required permits and pay any taxes or other costs associated with permitting. There will be no reimbursement for the cost of any ADOT or County permits.

2.3 Execution

2.3.1 Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly examined the Contract.

2.4 Ownership of the Contract

2.4.1 The Contract, including, but not limited to, the drawings and specifications, is the property of the County and is not to be used by the Contractor or any subcontractor on other projects outside the scope of the Work without the express written consent of the County.

ARTICLE 3. ADMINISTRATION OF THE CONTRACT

3.1 Lines of Authority and Communications

- 3.1.1** The County's Procurement Director is the County official with overall authority and responsibility for the award and administration of County contracts below the adopted formal bid threshold. The Procurement Director or his designated Procurement Department representative after consultation with the County Contract Representative has the ultimate authority to resolve disputes concerning Contract performance and to stop the Work whenever such stoppage may be necessary to ensure the proper execution of the Work.
- 3.1.2** The County Contract Representative is the designated representative of the particular County department for which the Work is being constructed (the "user department") or the County department which is responsible for the oversight of the Work.
- 3.1.3** Day-to-day administration of the Contract is the responsibility of the County Contract Representative. The County Contract Representative is the County's representative during the prosecution of the Work and shall act as surveillance and technical advisor for the County. The County Contract Representative duties are more fully described in Section 3.2 of this Article.
- 3.1.4** The Contractor shall supervise and direct the Work and shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work, unless the Contract gives other specific instructions concerning these matters. The Contractor's duties and responsibilities are more fully described in Article 4 of these Contract conditions.
- 3.1.5** Except where the Contract otherwise provides or where direct communication has been specifically authorized, the Contractor shall initially communicate with the County Contract Representative.

3.2 County Contract Representative's General Authority and Responsibilities

- 3.2.1** Unless the Contractor is responsible for the design of the Work, the County Contract Representative shall furnish to the Contractor, free of charge unless it is provided otherwise in the Contract, copies of drawings, specifications and instructions available for the execution of the Work. The County Contract Representative may furnish additional clarifications or interpretations in writing or by drawings as may be necessary for the proper progress and execution of the Work. Such additional clarifications and interpretations shall be furnished with reasonable promptness, and the Contractor shall not do work without drawings or written clarifications where needed. All drawings, specifications and copies thereof furnished by the County Contract Representative are County property. They are not to be used on other work and, with the exception of the signed Contract, and are to be returned to the County Contract Representative at the completion of the Work.
- 3.2.2** The County Contract Representative shall provide general surveillance of the Work. By making sufficient periodic visits to the site of the Work, the County Contract Representative will become thoroughly familiar with the progress and quality of completed portions of the Work, and will assess if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract.
- 3.2.3** The County Contract Representative will decide all questions which may arise as to the quality and acceptability of materials furnished and Work performed and as to the rate of progress of the Work, and all questions which may arise as to the interpretation of the drawings and specifications.
- 3.2.4** The County Contract Representative shall have the authority to reject work that is not in conformity with the Contract and to order additional inspections and testing of the Work.
- 3.2.5** The County Contract Representative shall conduct an initial review of, and approve or deny, written Change Orders submitted by the Contractor, and may prepare Change Orders and provide field clarifications and corrections. All Change Orders shall be approved by the Procurement Director or appointed designee prior to any work being done. However, in emergencies endangering life or property, the County Contract Representative may take action and issue orders which are deemed necessary to avert the loss of life or property.
- 3.2.6** The County Contract Representative, pursuant to Article 10 of these General Conditions, shall make recommendations to the Contract Officer as to all claims of the Contractor.
- 3.2.7** The County Contract Representative will review and process the Contractor's monthly Estimates for Payment, as more fully set forth in Article 7 of these General Conditions.
- 3.2.8** The County Contract Representative will conduct inspections to determine the dates of Substantial Completion and Final Completion and will certify such dates to the Contract Officer.

3.2.9 The County Contract Representative will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility.

3.3 Public Inspections

3.3.1 Unless otherwise specifically provided in the Contract, Public Inspectors who perform day-to-day inspections of the Work for compliance with applicable codes will have authority to require compliance with drawings, specifications and applicable codes, and may provide clarification of any unspecified or unclear item or situation.

3.3.2 If the drawings or specifications, laws, ordinances, or any public authority requires any work to be specially tested or approved, the Contractor shall give the County Contract Representative timely notice of its readiness for inspection. If the inspection is by an individual, authority or entity other than the County Contract Representative or the Public Inspectors, the Contractor shall advise the County Contract Representative of the date fixed for such inspection.

3.3.3 All tests, inspections or approvals required to be performed by the County Contract Representative, Public Inspectors, or other authorities or entities shall not relieve the Contractor of their obligation to perform the Work in accordance with the Contract.

3.4 Special Inspections and Testing of Materials

3.4.1 All equipment and materials used in the construction of the Work, especially those upon which the strength and durability of the structure may depend, shall be subject to adequate inspection and testing in accordance with accepted standards, to establish conformance with specifications and suitability for the use intended, as determined by the County Contract Representative.

3.4.2 The performance of tests and the engagement of testing laboratories or agencies must have the prior approval of the County Contract Representative. Except as provided in subsection 3.4.3, the County will pay for approved tests and services rendered by the approved laboratory or agency in addition to the Contract price for construction.

3.4.3 When initial tests indicate that any portion of the Work is not in conformance with the Contract because of faulty workmanship, the Contractor shall be required to pay for necessary re-tests. When initial tests indicate that the work is in conformance with the Contract, any re-testing that's ordered by the County shall be paid for by the County.

ARTICLE 4. THE CONTRACTOR'S DUTIES AND RESPONSIBILITIES

4.1 Contractor's Review of Contract Documents and Site Conditions

4.1.1 It shall be the duty of the Contractor to carefully study and compare all drawings, specifications and instructions. If any discrepancies, errors, omissions or inconsistencies are discovered in the drawings or specifications, or between the drawings and specifications, or there are any conflicts between existing site conditions and the requirements of the drawings and specifications, the Contractor shall immediately call all such discrepancies to the attention of the County Contract Representative.

4.1.2 The Contractor shall be required to use, for data and dimensions, figures marked on the drawings in preference to what the drawings may measure to scale; but in the absence of figured dimensions, scale dimensions may be used with the prior written concurrence of the County Contract Representative. The Contractor shall verify all dimensions shown and check all measurements in connection with any present building or buildings, level or grades, walks, driveways or other existing conditions before executing any work. Errors or inconsistencies shall be reported to the County Contract Representative immediately. ***It is the responsibility of the Contractor to provide BLUESTAKE verification of underground utilities on and off the construction site.***

4.1.3 Change orders will not be issued to cover any cost, loss or expense for additional labor or materials required to rectify any error or inconsistency in the drawings and specifications unless prior notification is given by the Contractor to the County Contract Representative.

4.1.4 The Contractor shall perform the Work in accordance with the Contract and with shop drawings, product data and samples that have been approved by the County Contract Representative.

- 4.1.5 Notwithstanding the above provisions, if the Contractor is responsible for the design of the Work, the Contractor shall ensure the accuracy and completeness of the drawings, specifications and instructions. If any discrepancies, errors, omissions or inconsistencies are discovered in the drawings or specifications, or between the drawings and specifications, or there are any conflicts between existing site conditions and the requirements of the drawings and specifications, the Contractor shall immediately call all such discrepancies to the attention of the County Contract Representative and shall be responsible for any required corrective action.
- 4.2 **Contractor's Supervision**
- 4.2.1 The Contractor shall efficiently and continuously supervise and direct the Work, using its best skill and attention. Unless the Contract specifically provides otherwise, the Contractor shall be solely responsible for and shall exercise control over construction means, methods, techniques and procedures and shall coordinate the sequences of all portions of the Work.
- 4.2.2 The Contractor shall ensure that the key personnel submitted in response to the Invitation for Bids and assigned to this Contract are available throughout the term of the Contract. In the event that the Contractor requests substitution of key personnel, the Contractor shall obtain prior approval from the County for key personnel substitution. The Contractor shall ensure that substituted personnel are equally qualified and capable. Information on the qualifications of proposed substitutes shall be provided to the County for its consideration and approval prior to substitution taking place.
- 4.2.3 The Contractor agrees that it is as fully responsible to the County for the acts and omissions of its subcontractors and of persons, either directly or indirectly employed by the Contractor, as it is for the acts and omissions of persons directly employed by the Contractor.
- 4.3 **Materials and Labor; Warranty**
- 4.3.1 Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, equipment, tools, construction equipment and machinery, water, gas, heat, utilities, transportation, and other facilities and services necessary for the execution, completion and delivery of the Work within the specified Completion Time.
- 4.3.2 The Contractor shall pay all applicable taxes associated with the Work.
- 4.3.3 The Contractor warrants to the County that all materials and equipment furnished under the Contract shall be new unless otherwise specified, and that all of the Work shall be of good quality, free from faults and defects and in conformance with the Contract. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.
- 4.3.4 The Contractor shall be held to furnish all work as specified in the Contract. After a price proposal for the Work has been accepted by the County, changes of brand named, trade named, trademarked, patented articles, or any other substitutions shall be allowed only by written order signed by the County Contract Representative. Unless otherwise agreed to via Change Order, the County shall receive all benefits of the difference in costs.
- 4.4 **Construction Schedules and Submittals**
- 4.4.1 Before commencing the Work, the Contractor shall provide the County Contract Representative with a construction schedule for the Work, fixing the dates at which various pre-determined events shall occur in order to promote a timely completion of the various parts of the Work in accordance with the Contract. The schedule may be revised from time to time as may be required by conditions of the Work, but shall not exceed time limits, or any extensions thereof, set forth in the Contract or in the individual job order, as appropriate.
- 4.4.2 The Contractor shall prepare and keep current for the County Contract Representative's approval, a schedule of submittals which shall be coordinated with the Contractor's construction schedule and allow the County Contract Representative reasonable time to review such submittals.
- 4.4.3 After review, the County Contract Representative, with reasonable promptness, shall approve these shop or setting drawings, product data, samples and sequences for conformance with the design concept of the project, the approved construction schedule, and other requirements of the Contract.
- 4.4.4 The Contractor shall make any corrections required by the County Contract Representative and re-submit such corrected materials to the County Contract Representative for approval. Any correction or change that will result in a design or function change or in an increase or decrease in the Contract price must also receive the prior approval of the County's Director of Procurement or his designee.

- 4.4.5 The Contractor shall perform no portion of the Work requiring submittal and review of shop drawings, product data, samples or schedules until the respective submittals have been approved by the County Contract Representative, and shall not deviate from such submittals after final approval by the County Contract Representative.
- 4.4.6 As-built documents must be provided to the County by the Contractor prior to final acceptance of electrical equipment. The County reserves the right to withhold final payment until complete as-built drawings have been received in good order by the County Contract Representative.
- 4.5 **Documents and Samples at the Work Site**
- 4.5.1 Unless otherwise directed by the County's Contract Representative, the Contractor shall maintain at the Work site a complete file of the drawings, specifications, addenda, change orders and other approved modifications, in good order and marked to reflect changes and selections made during construction, together with all approved shop drawings, product data, samples and similar required submittals. Such files shall be made available to the County Contract Representative and Public Inspectors upon request.
- 4.6 **Protection and Use of Site - (Signs, Utilities, Water, Sanitation, Traffic, etc.)**
- 4.6.1 The County will provide land, rights-of-way and easements for all work specified in the Contract.
- 4.6.2 Contractor shall prevent any damage to pipes, sewers, computer and phone lines, conduits or other structures, including public and/or private lawns, gardens, shrubbery and trees encountered in the Work, and shall hold the County harmless from damages for any injury done to such pipes, structures or property during the course of the Work.
- 4.6.3 Work shall be accomplished so that there will be a minimum of traffic interruption and inconvenience, discomfort or damage to the public.
- 4.6.4 The Contractor shall supply safe drinking water and sanitary facilities for all contractor's employees at the work site.
- 4.6.5 If archaeological, historical or paleontological features are encountered or discovered during any activity related to the Work, the Contractor shall stop work immediately at that location and shall take all reasonable steps to secure the preservation of those features. The County Contract Representative will make arrangements for the proper treatment of the affected portion of the Work site. The Contractor shall not resume work in the affected portion without the prior approval of the County Contract Representative. Extensions in the Contract time for delays resulting from the discovery of archaeological, historical or paleontological features, if such discovery results in a delay to the progress of the Work, may be claimed by the Contractor in accordance with Article 10 of these General Conditions.
- 4.7 **Cleaning Up**
- 4.7.1 The Contractor shall at all time keep the construction site and surrounding area free from accumulations of waste material or rubbish caused by operations under the Contract. Upon completion of the Work, the Contractor shall remove all rubbish, tools, equipment, scaffolding and surplus materials from the site and surrounding areas and leave the area "broom clean" or its equivalent, unless otherwise instructed by the County Contract Representative.
- 4.7.2 If the Contractor fails to clean up as provided in the Contract, the County may do so and the cost thereof shall be charged against the Contractor.
- 4.8 **Emergencies**
- 4.8.1 In an emergency affecting the safety of life or property, the Contractor, without special instruction or authorization from the County Contract Representative, is hereby permitted, authorized and directed to act at its own discretion to prevent threatened loss or injury.
- 4.8.2 Except in the case of an emergency requiring immediate remedial work, any work performed after regular working hours, on Saturdays, Sundays or legal holidays, shall be performed without additional expense to the County unless such work has been specifically requested and approved by the County Contract Representative.

4.8.3 The Contractor shall file with the County Contract Representative the names, addresses and telephone numbers of their company who can be contacted at any time in case of emergency. These Contractor representatives must be fully authorized and equipped to correct unsafe or excessively inconvenient conditions on short notice by the County or the Public Inspectors.

4.9 Permits, Fees and Notices

4.9.1 The Contractor shall, at its expense, obtain all necessary permits and licenses for work performed under the Contract, and shall give all necessary notices required by laws, ordinances, rules, regulations and lawful orders of public authorities pertaining to performance of the work, public health and safety.

4.9.2 If the Contractor knowingly performs work which is not in compliance with such laws, ordinances, rules, regulations or orders, without such notice to the County Contract Representative, the Contractor shall assume full responsibility for such Work and shall bear all costs attributable thereto.

4.10 Royalties and Patents

4.10.1 The Contractor shall pay all royalties and license fees.

4.10.2 The Contractor and the surety shall defend any suit or proceeding brought against the procuring agency, during the prosecution or after the completion of the work, based on a claim that manufacture, sale, or use of any method, process, machine, technique, design, living thing, genetic material, or composition of matter, or any part thereof, furnished or used under this Contract constitutes an infringement of any patent, trademark, or copyright, and the Contractor shall pay all damages and costs awarded therein, against the procuring agency and any affected third party or political subdivision. If manufacture, sale, or use of said method, process, machine, technique, design, living thing, genetic material, or composition of matter, or any part thereof, is in such suit held to constitute infringement and if manufacture, sale, or use of said method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part thereof, is enjoined, the Contractor shall, at its own expense, either procure for the procuring agency the right to continue manufacture, sale, or use of said method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part thereof, or, subject to Engineer's approval, replace same with no infringing method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part, or modify it so it becomes no infringing.

4.10.3 If appropriate, the Contractor shall furnish the County Contract Representative satisfactory evidence of patent licenses or patent releases covering County-specified proprietary materials, equipment, devices or processes, as the case may be.

4.11 Protection of Persons and Property

4.11.1 The Contractor shall be responsible for initiating, maintaining, supervising and directing all safety precautions and programs in connection with the performance of the Contract.

4.11.2 The Contractor shall be responsible for the protection of all Work until completion and final payment is made, including any material or equipment to be incorporated whether in storage on or off the Work site.

4.11.3 The Contractor shall, at their own expense, replace damaged or lost material, or repair damaged parts of the Work or of other property at the work site or adjacent thereto, and the Contractor and their sureties shall be liable therefore.

4.11.4 The Contractor shall assume all risks from floods and casualties and shall make no claim for damages for delay from such causes. However, a reasonable extension of time on account of such delays may be allowed, subject to the conditions contained in Article 6 of these General Conditions.

4.11.5 In the event the Contractor encounters on the work site material reasonably believed to be a hazardous material, such as asbestos or polychlorinated biphenyl (PCB), the Contractor shall immediately stop work in the area affected and report the condition to the County Contract Representative.

4.11.6 The Contractor shall take all necessary precautions for the safety of employees on the work site and other persons who may be affected thereby, and shall comply with all applicable provisions of Federal, State and Municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed.

The Contractor shall erect and properly maintain at all times, as required by the condition and progress of the Work, all necessary safeguards for the protection of workmen and the public and shall post danger signs warning against the hazards created by such features of construction as protruding nails, hood hoists, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials.

- 4.11.7 The Contractor warrants it is fully familiar and shall comply with all of the safety requirements of the Occupational Safety and Health Act (29 U.S.C. Sections 641-678, or as amended or recodified from time to time). Also the Hazard Communication Act relating to the use of hazardous materials (29 C.F.R. 1910-1200, or as amended or recodified from time to time), as promulgated by the Federal Government and as implemented by the State of Arizona, and that it will be solely responsible for all fines and penalties provided for by law for any violation of such Act and, furthermore, shall require all subcontractors to comply with such Acts and with the provisions of this section. Any claims arising out of alleged violations of such Acts are covered by the indemnification set forth in Section 4.12.

4.12 **INSURANCE REQUIREMENTS**

The County requires a complete and valid Certificate of Insurance prior to the commencement of any service or activity as specified in this Contract for Construction Services. The Contractor must submit an original copy of the Certificate of Insurance maintaining the coverage limits as specified in the original solicitation document, **Section 6.0 Special Terms and Conditions, paragraph 6.14 titled Insurance Requirements**. The coverage's shall be maintained in full force and in effect during the term of the Contract for Construction Services and shall not serve to limit any liabilities or any other Contractor obligations.

ARTICLE 5. SUBCONTRACTS AND SEPARATE CONTRACTS

5.1 **Subcontracts**

- 5.1.1 The Contractor shall ensure that the subcontractors submitted in response to the Invitation for Bid and assigned to this Contract are available throughout the term of the Contract. In the event that the Contractor requests substitution of subcontractors, the Contractor shall obtain prior approval from the County for subcontractor substitution. The Contractor shall ensure that substituted subcontractors are equally qualified and capable. Information on the qualifications of proposed substitutes shall be provided to the County for its consideration and approval prior to substitution taking place.
- 5.1.3 In job-order-contracting, by appropriate written agreement, the Contractor agrees that each subcontractor has been notified in writing of the negotiated amount or coefficient agreed to for billing purposes. Furthermore, by appropriate written agreement, the Contractor agrees that each subcontractor shall be bound to the Contractor by the terms of the Contract. In the event of a conflict between the substance of a written subcontract and the language of this Contract, the language of this Contract shall prevail.
- 5.1.4 Contractor shall ensure that each subcontract shall preserve and protect the rights of the County under the Contract with respect to the work to be performed by the subcontractor. Where appropriate, the Contractor shall require each subcontractor to enter into similar agreements with sub-subcontractors. In this connection, the Contractor shall make available to each subcontractor, prior to execution of any subcontract, copies of the Contract provisions to which the subcontractor shall be bound. Subcontractors shall also make copies of applicable portions of the Contract available to their respective subcontractors.
- 5.1.5 Each subcontract shall require the subcontractor to submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment to the County in a timely manner, including any claims for extras, extensions of time, and damages for delays or otherwise to the Contractor in the manner provided in the Contract for like claims by the Contractor upon the County.
- 5.1.6 **The Contractor further agrees:**
1. To be bound to the subcontractor with respect to obligations under the contract in the same manner and to the same extent that the County assumes obligations under this Contract, including provisions of the contract that afford remedies and redress to the Contractor from the County.
 2. To promptly pay the subcontractor in accordance with applicable State statute.

3. That, at all times, the subcontractors' total payments shall be proportionate to the value of the labor and materials provided by them.
Payment may be preconditioned upon the subcontractors providing the Contractor with requested significant partial or final lien waivers.
4. To pay the subcontractor to such extent as may be provided by the Contract or the subcontract, if either of these provides for earlier or larger payments than the above.
5. To ensure timely payment to subcontractors for their work as performed and for materials fixed in place, less any applicable retention, despite any delay by the County in making payments to the Contractor for any cause not the fault of the subcontractor.
6. To share or forward, as appropriate, with its subcontractors or, as appropriate, with the County, any fire insurance proceeds received by the Contractor under the insurance provisions of the Contract.
7. That no claim for services rendered or materials furnished by the Contractor to the subcontractor shall be valid unless written notice thereof is given by the Contractor to the subcontractor during the first ten (10) days of the calendar month following the month in which the claim originated.
8. To give the subcontractor an opportunity to be present and to submit evidence in any Contractual claim, controversy or dispute.

5.1.7 Nothing in this Article shall create any obligation on the part of the County to pay to, or to see to the payment of, any sums to any subcontractor, except as may otherwise be required by law.

5.1.8 Each subcontract agreement for a portion of the Work is hereby assignable by the Contractor to the County provided that:

1. Assignment is effective at the sole option of the County and only upon termination of the Contract for cause pursuant to Article 9 of these General Conditions, and only for those subcontract agreements which the County determines to accept by notifying the subcontractor in writing, and
2. Assignments is subject to the prior rights of the surety obligated under the Bonds relating to the Contract.

5.2 Separate Contracts

5.2.1 The County reserves the right to perform construction or operations related to the Work with the County's own forces and to let separate Contracts in connection with other portions of the Work or other construction or operations on the Work site.

5.2.2 The Contractor shall afford other Contractors on the Work site reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate its work with theirs.

5.2.3 The County Contract Representative shall coordinate the activities of the County's own forces and of each separate Contractor with the work of the Contractor. The Contractor and all other Contractors on the Work site shall be required to review their construction schedules and cooperate with the County Contract Representative in coordinating the various portions of the Work with the schedules of such separate contractors.

5.2.4 If any part of the Contractor's work depends, for proper execution or results, upon the work of any other contractor, the Contractor shall inspect and promptly report to the County Contract Representative any defects in such work that render it unsuitable for continuance of the Contractor's Work. Failure to inspect and report may constitute an acceptance of the other contractor's work as fit and proper for the reception of the Contractor's Work, except as to defects not then reasonably discoverable.

5.2.5 Costs caused by the Contractor because of delays or by improperly timed activities or defective construction shall be borne solely by the Contractor.

5.2.6 If the Contractor causes damage to any separate contractor on the site, the Contractor, upon due

notice, agrees to settle with such separate contractor by agreement or arbitration, if he will so settle. If such separate contractor sues the County on account of any damage alleged to have been so sustained, the County shall notify the Contractor, who shall defend such proceedings and, if any judgment against the County arises there from, the Contractor shall pay or satisfy it.

- 5.2.7 Should separate contractors on the Work cause any damage, cost or loss to the Contractor, the County shall not be held responsible or liable therefore in any way other than extensions of completion time in accordance with Article 6 of these General Conditions.

ARTICLE 6. TIME FACTORS

6.1 Time

- 6.1.1 Unless otherwise provided in the Contract, the Completion Time is the number of calendar days, including authorized time extensions, specified for completion of the Work.
- 6.1.2 Completion Time shall commence on the day specified in the Notice to Proceed. The date shall not be postponed on account of the failure of the Contractor, or of any of its subcontractors to take any action required to commence the Work.
- 6.1.3 The date of Substantial Completion is the date certified by the County Contract Representative pursuant to Subsection 7.4.1 of Article 7 of these General Conditions.
- 6.1.4 The term "day" as used in the Contract shall mean calendar day.
- 6.1.5 By execution of the Contract documents, or by concurrence with the Notice to Proceed in the case of a job order, the Contractor acknowledges that the time described is a reasonable period for a competent Contractor to complete the Work.
- 6.1.6 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the agreed upon time frame. If the Contractor is delayed on any portion of the Work for any reason whatsoever, it shall expeditiously proceed on other portions of the Work which are not affected by such delay.

6.2 Delays and Time Extensions

- 6.2.1 It is agreed that the County's only liability for any delay from any cause shall be limited to granting a time extension to the Contractor and that no extended general conditions for any delay will be applicable unless agreed to by the County. There is no other obligation, express or implied, on the part of the County to the Contractor for delay from any cause.
- 6.2.2 The completion time shall be extended when delay in completion of the Work by either the Contractor or the subcontractors is due to any preference, priority or allocation order duly issued by the Federal Government.
- 6.2.3 Should a dispute arise between the Contractor and the County regarding a delay or time extension, the Contractor shall continue progress on the Work until the dispute is resolved.

ARTICLE 7. PAYMENTS TO THE CONTRACTOR

7.1 Contract Price; Request for Payment; Schedule of Values

- 7.1.1 The Contract amount or coefficient stated in the Contract documents or, in the case of a job order, in the Notice to Proceed, plus or minus any authorized adjustments is the amount payable by the County to the Contractor for performance of the Work under the Contract or for a specific job order.
- 7.1.2 During the course of construction, the Contractor shall request payment for work actually performed during the preceding month or some other time period as mutually agreed to, using "ESTIMATE FOR PAYMENT" forms, which are furnished by the County or a County approved form submitted by the Contractor. Completed forms shall be submitted to the County Contract Representative. A schedule of values and an updated project schedule shall accompany the request for payment.

7.2 Certification and Payment; Retainage; Substitute Securities

- 7.2.1 The County by mutual agreement may make progress payments on Contracts of less than ninety (90) days and shall make monthly progress payments on all other Contracts as provided for in this paragraph.

Payment to the Contractor on the basis of a duly certified and approved estimate for payment of the work performed during the preceding calendar month under the Contract may include payment for material and equipment, but to ensure the proper performance of the Contract, the County shall retain ten per cent of the amount of each estimate until final completion and acceptance of all material, equipment and work covered by the Contract. An estimate of the work submitted shall be deemed approved and certified for payment after seven (7) days from the date of submission unless before that time the County or the County's designee prepares and issues a specific written finding setting forth those items in detail in the estimate of the work that are not approved for payment under the Contract. The County may withhold an amount from the progress payment sufficient to pay the expenses the County reasonably expects to incur in correcting the deficiency set forth in the written finding. The progress payments shall be paid on or before fourteen (14) days after the estimate of the work is certified and approved. The estimate of the work shall be deemed received by the County on submission to any person designated by the County for the submission, review or approval of the estimate of the work.

- 7.2.2** When the Contract is fifty per cent complete, one-half of the amounts retained including any securities substituted under paragraph 7.2.4 shall be paid to the Contractor on the Contractor's request provided the Contractor is making satisfactory progress on the Contract and there is no specific cause or claim requiring a greater amount to be retained. After the Contract is fifty per cent complete, no more than five per cent of the amount of any subsequent progress payments made under the Contract may be retained providing the Contractor is making satisfactory progress on the project, except that if at any time the County determines satisfactory progress is not being made ten per cent retention shall be reinstated for all progress payments made under the Contract after the determination.
- 7.2.3** On completion and acceptance of each separate building, public work or other division of the Contract on which the price is stated separately in the Contract, except as qualified in paragraph 7.2.5, payment may be made in full, including retained percentages, less authorized deductions. In preparing estimates, the material and equipment delivered on the site to be incorporated in the job shall be taken into consideration in determining the estimated value by the architect, engineer or other person, as specified in the Contract.
- 7.2.4** Ten per cent of all estimates shall be retained by the County as a guarantee for complete performance of the Contract, to be paid to the Contractor within sixty (60) days after completion or filing notice of completion of the Contract. Retention of payments by the County longer than sixty (60) days after final completion and acceptance requires a specific written finding by the County of the reasons justifying the delay in payment. The County may not retain any monies after sixty (60) days that are in excess of the amount necessary to pay the expenses the County reasonably expects to incur in order to pay or discharge the expenses determined by the County in the finding justifying the retention of monies. In lieu of the retention provided in this section, the County, at the option of the Contractor, shall accept as a substitute an assignment of time certificates of deposit of banks licensed by this state, securities of or guaranteed by the United States of America, securities of this state, securities of counties, municipalities and school districts within this state or shares of savings and loan institutions authorized to transact business in this state, in an amount equal to ten per cent of the bid amount that will be retained by the County as a guarantee for complete performance of the Contract. If the County accepts substitute securities, as described in this paragraph, for the ten per cent retention, the Contractor is entitled to receive all interest or income earned by this security as it accrues and all such security in lieu of retention shall be returned to the Contractor by the County within sixty (60) days after final completion and acceptance of all material, equipment and work covered by the Contract if the Contractor has furnished the County satisfactory receipts for all labor and material billed and waivers of liens from any and all persons holding claims against the work. In no event shall the County accept a time certificate of deposit of a bank or shares of a savings and loan institution in lieu of the retention specified unless accompanied by a signed and acknowledged waiver of the bank or savings and loan association of any right or power to set off against either the County or the Contractor in relationship to the certificates or shares assigned.
- 7.2.5** In any instance where the County has accepted substitute security as provided in paragraph 7.2.4, any subcontractor undertaking to perform any part of this public work is entitled to provide substitute security to the Contractor on terms and conditions similar to those described in paragraph 7.2.4, and this security is in lieu of any retention under the subcontract.
- 7.2.6** Notwithstanding paragraphs 7.2.1 through 7.2.5, retention is not required for job-order-contracting construction services contracts, except that the County may elect to require retention for a job-order-contracting construction services contract. If the County elects to require retention, paragraphs 7.2.1 through 7.2.5 apply to the job-order-contracting construction services Contract, except that:

1. Contract, or failure to reasonably account for the application or use of those payments, constitutes grounds for disciplinary action by the Registrar of Contractors. The subcontractor or material supplier shall notify the Registrar of Contractors and the County in writing of any payment less than the amount or 1 Retention shall be five per cent of each payment instead of ten per cent reducing to five per cent.
2. Retention applicable to each job order shall be released within sixty (60) days after final completion of the job order and acceptance of the work under the job order.
3. No retention on the job order may be released until that time.
4. The retention percentage shall not be increased.

7.2.7 The Contractor shall pay to the Contractor's subcontractors or material suppliers and each subcontractor shall pay to the subcontractor's subcontractor or material supplier, within seven (7) days of receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed the Contractor or subcontractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest, except that no Contract for construction services may materially alter the rights of any Contractor, subcontractor or material supplier to receive prompt and timely payment as provided under this section. The payments to subcontractors or material suppliers shall be based on payments received pursuant to this section.

7.2.8 A subcontractor may notify the County in writing requesting that the subcontractor be notified by the County in writing within five (5) days from payment of each progress payment made to the Contractor. The subcontractor's request remains in effect for the duration of the subcontractor's work on the project.

7.2.9 Nothing in this section prevents the Contractor or subcontractor, at the time of application and certification to the County or Contractor, from withholding the application and certification to the County or Contractor for payment to the subcontractor or material supplier for unsatisfactory job progress, defective construction work or materials not remedied, disputed work or materials, third party claims filed or reasonable evidence that a claim will be filed, failure of a subcontractor to make timely payments for labor, equipment and materials, damage to the Contractor or another subcontractor, reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum or a reasonable amount for retention that does not exceed the actual percentage retained by the County.

7.2.10 If any payment to a Contractor is delayed after the date due interest shall be paid at the rate of one per cent per month or fraction of a month on the unpaid balance as may be due.

7.2.11 If any periodic or final payment to a subcontractor is delayed by more than seven (7) days after receipt of the periodic or final payment by the Contractor or subcontractor, the Contractor or subcontractor shall pay the subcontractor or material supplier interest, beginning on the eighth day, at the rate of one per cent per month or fraction of a month on the unpaid balance as may be due.

7.2.12 Notwithstanding anything to the contrary in this section, this section applies only to amounts payable in a construction services Contract for construction and does not apply to amounts payable in a construction services Contract for design services, preconstruction services, finance services, maintenance services, operations services and other related services.

7.2.13 The County Contract Representative, with reasonable dispatch, will review the contents of the ESTIMATE FOR PAYMENT submitted by the Contractor, determine the sufficiency of the estimate, satisfy himself that the County has received full value, certify the estimate and submit it through normal channels for payment.

7.2.14 Neither the certification nor payment made to the Contractor, nor partial or entire use or occupancy of the Work by the County shall constitute an acceptance of any portion of the Work.

7.3 Payment Withheld

7.3.1 If the County Contract Representative is unable to certify a request for payment in whole or in part because, after observing the Work and the data comprising the ESTIMATE FOR PAYMENT, the County Contract Representative determines that the Work has not progressed or the quality of the Work is not in accordance with the Contract, the County Contract Representative shall promptly notify the Contractor. If the County Contract Representative and the Contractor cannot agree on a revised amount, the County Contract Representative will promptly issue a certificate for payment in an amount he determines is justified.

- 7.3.2** The County Contract Representative or other County official, as a result of subsequently discovered evidence, may also withhold or nullify the whole or a part of any certification to such extent as may be necessary to protect the County from loss on account of:
1. Defective work not remedied.
 2. Third-party claims filed or reasonable evidence indicating probable filing of such claims.
 3. Failure of the Contractor to make payments properly to subcontractors or for labor, materials, or equipment.
 4. Reasonable doubt that the Work can be completed for the unpaid balance of the Contract amount, or reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay.
 5. Damage to another contractor or to the County.
 6. Damage to the real or personal property of another and failure to repair or replace the same.
 7. Persistent failures to carry out the Work in accordance with the Contract.

7.3.3 When the grounds for withholding payment have been corrected to the satisfaction of the County Contract Representative or other County official concerned, the County shall proceed to process any amounts due.

7.4 Substantial Completion

7.4.1 When the Contractor considers that the Work, or a portion thereof which the County has agreed to accept separately, is ready for its intended use, it shall notify the County Contract Representative in writing that the work or the agreed upon portion thereof, is substantially complete and request the County Contract Representative to issue a Certificate of Substantial Completion. Within a reasonable time thereafter, the County Contract Representative shall make an inspection of the Work, or the designated portion thereof, to determine the status of completion. If the inspection discloses any item that is not in accordance with the Contract, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item. The Contractor shall then submit a request for a re-inspection by the County Contract Representative. When the Work or designated portion thereof is determined to be substantially complete, the County Contract Representative shall prepare a Certificate of Substantial Completion for signature of the parties, fixing therein the date of Substantial Completion and establishing the responsibilities of the County and Contractor, pending final payment by the County, for security, maintenance, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall finish all items on the punch list attached to the certificate.

7.4.2 Warranties required by the Contract shall commence on the date of Final Completion for a period of one year, except where a specific provision of the Contract provides otherwise.

7.5 Final Completion and Final Payment

7.5.1 Upon receipt of notice from the Contractor that the Work is ready for final inspection and upon receipt of a request for final payment, the County Contract Representative will determine that all items on the punch list have been completed or corrected and the County will make payment reflecting adjustments in retainage, if any, for such work or portion thereof as provided for in the Contract.

7.6 Consent of Surety/ Lien Waivers and As-Built Drawings

7.6.1 Neither the final payment nor any part of the retained percentage shall become due until the Contractor provides to the Contract Officer a Consent of Surety Certificate from their bonding company, or lien waivers, at the Contract Officer's discretion and all completed as-built drawings.

7.7 Partial Utilization

7.7.1 The County may occupy or use any portion of the Work which the County and the Contractor agree constitutes a separately functioning and usable part of the Work that can be used by the County without significant interference with the Contractor's performance of the remainder of the Work. Such use or occupancy may commence whether or not the portion is substantially complete, provided the County and the Contractor have accepted in writing their mutual responsibilities regarding the used portion, including but not limited to insurance coverage, maintenance and utilities.

7.7.2

Partial use or occupancy of the Work by the County shall not constitute acceptance of Work not complying with the requirements of the Contract.

ARTICLE 8. UNCOVERING AND CORRECTION OF WORK; CHANGES IN THE WORK

8.1 Uncovering of Work

8.1.1 Piping, wiring, ducts, etc., shall not be covered up before proper inspection, approval and certificates, if required, are issued. Should any work that is designated for inspection by the County Contract Representative or the Contract before covering is covered before such inspection, it must be uncovered by the Contractor at their expense when examination is ordered by the County Contract Representative.

8.1.2 If a portion of the Work not designated by the County Contract Representative or the Contract for inspection has been covered and the County Contract Representative or a Public Inspector orders such work uncovered for inspection, the Contractor shall immediately uncover such work. If such uncovered work is found to be in accordance with the Contract, an appropriate Change Order shall be issued to compensate the Contractor for the expense of uncovering and replacing the work. If such work is found to be not in compliance with the Contract, the Contractor shall pay such costs, unless the condition was caused by the County or a separate Contractor.

8.1.3 The County shall not be responsible for or bear the cost of any re-examination and replacement occasioned by defects in the work caused by subcontractors.

8.2 Correction of Work

8.2.1 Correction of Work Before Final Payment: The Contractor shall promptly remove from the site of the Work all materials and/or associated portions of the Work rejected by the County Contract Representative as failing to conform to the Contract, whether incorporated or not, and the Contractor shall promptly replace and re-execute the Work in accordance with the Contract, without expense to the County, and shall bear the expense of making good the work of other contractors destroyed or damaged by such removal or replacement. If the Contractor does not remove such rejected Work and/or materials within a reasonable time, fixed by written notice, the County may remove it and may store the materials at the expense of the Contractor.

8.2.2 Should the Contractor fail to repair such defective material and/or workmanship or to make replacements within five (5) calendar days after written notice by the County, it is agreed that the County may, at its sole discretion, make such repairs and replacements and the actual cost of the required labor and materials shall be chargeable to and payable by the Contractor or his surety.

8.3 Changes in the Work

8.3.1 The County Contract Representative may order extra work or make changes by altering, adding to or deducting from the Work, the Contract price being adjusted accordingly by Change Order without invalidating the Contract. All such work shall be executed under the conditions of the original Contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

8.3.2 The value of any extra work or change ordered under the Contract shall be determined in one or more of the following ways:

1. By estimate and acceptance in a lump sum.
2. By unit prices in the Contract or subsequently agreed upon prices.
3. By a fixed fee.

ARTICLE 9. SUSPENSION OR TERMINATION OF THE WORK

9.1 Suspension of the Work for Cause; County's Right to Perform the Work

9.1.1 If the Contractor fails to correct Work which is not in accordance with the Contract, or persistently fails to carry out the Work in accordance with the Contract, the Contract Officer, after consultation with the County Contract Representative, may order the Contractor in writing to stop the Work, or any portion of the Work, until the cause for such order has been eliminated.

9.1.2 If the Contractor fails to prosecute the Work properly or fails to perform any provision of this Contract, the County may, five (5) days after written notice to the Contractor, and without prejudice to any other remedy the County may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor and its surety shall be liable to the County for such deficiency.

9.2 Termination by the County for Cause

9.2.1 The County, upon certification by the County Contract Representative, without prejudice to any other right or remedy of the County and after giving the Contractor seven (7) days written notice, may terminate this Contract as to all or any part of the Work for any of the following reasons:

1. If the Contractor abandons the work, or unnecessarily delays the work.
2. If the Contractor should consistently or repeatedly refuse or fail to supply enough properly skilled workers or proper materials or competent subcontractor.
3. If the Contractor fails to timely make payment to subcontractor for materials or labor in accordance with the respective agreements between the Contractor and the subcontractor or as expressly set forth herein.
4. If the Contractor persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction, or persistently violates the conditions or covenants of this Contract.
5. If the Contractor should be adjudged bankrupt.
6. If the Contractor should make a general assignment for the benefit of its creditors or if a receiver should be appointed on account of its insolvency.
7. If the Contractor is otherwise in substantial breach of a provision of the Contract as determined by the County.

9.2.2 Upon termination of the Contract for any of the above reasons, the County, subject to any prior rights of the surety, may:

1. Take possession of the Work and of all materials, equipment, tools, and construction equipment and machinery at the Work site or adjacent thereto belonging to the Contractor.
2. Accept assignments of subcontracts pursuant to Subsection 5.1.8 of Article 5 of these General Conditions.
3. Finish the Work by whatever reasonable method the County may deem expedient. In completing the Work by a new contractor or by doing the Work itself, the County may use such equipment, materials, supplies, machinery, implements, tools and plant of the Contractor in the County's possession and may make all necessary repairs and replacements thereto.

9.2.3 If the County terminates the Contract for one of the reasons stated in Subsection 9.2.1, the Contractor shall not be entitled to receive any further payment.

9.2.4 The cost of fully completing the Work provided for under any new contract shall include the sum or sums of money to be paid by the County to other Contractors, all costs of repairs and replacements of machinery, implements, tools and plant of the Contractor hereunder, and also all sums of money paid for additional management and administrative services, including but not limited to the cost of the County Contract Representative's additional services and added expenses made necessary by the termination of the Contract.

9.2.5 If the unpaid balance of the Contract price exceeds costs of finishing the Work, such excess may, at the County's discretion, be paid to the Contractor. If such costs exceed the unpaid balance, the County may sell all materials, supplies, machinery, implements, tools and plant of the Contractor's then on hand, at public sale, on giving the Contractor twenty (20) days notice of the time and place of such sale, and the net proceeds derived from the sale of said property shall be applied against such costs. Should the amount received from the sale be insufficient to pay such deficiency, the Contractor and its surety shall be liable to pay the amount of the deficiency.

9.3 Suspension by the County for Convenience

9.3.1 The County may, without cause, order the Contractor in writing to suspend or interrupt the Work in whole or in part for such period of time as the County may determine whenever such suspension or interruption would be in the best interest of the County.

9.3.2 If the County suspends the Work for convenience, an adjustment shall be made for substantiated increases in the cost of performance of the Contract, if any, including profit on the increased cost of performance, caused by suspension or interruption. No adjustment shall be made to the extent:

1. That performance is, was or would have been so suspended or interrupted by another cause for which the Contractor is responsible, or
2. That an equitable adjustment is made or denied by the County.

9.4 Termination by the County for Convenience

9.4.1 The performance of the Work under this Contract may be terminated by the County, in whole or in part, in accordance with this clause whenever the County reasonably determines that such termination is in the best interest of the County. Any such termination shall be effected by delivery to the Contractor of a written Notice of Termination specifying the extent to which performance of the Work is terminated, and the date upon which such termination becomes effective.

9.4.2 If the Contract is terminated by the County as provided herein, the Contractor shall receive compensation for any Work performed and accepted, together with profit in proportion to the Work performed and accepted. The compensation shall include payment for contractual obligations reasonably incurred prior to termination. No amount shall be allowed for anticipated profit on unperformed Work.

9.4.3 In the event the County terminates the Work, in whole or in part, for cause pursuant to Section 9.2 of this Article 9 and the termination is later deemed to be unjustified, then such termination shall be automatically deemed a termination for convenience and the provisions of this Section 9.4 shall apply.

9.4.4 Termination of the Contract or portion thereof by the County for convenience shall not relieve the Contractor of their contractual responsibilities for the Work completed, nor shall it relieve the surety of its obligation for and concerning any just claim arising out of the Work completed.

9.5 Contractor's Right to Terminate Contract

9.5.1 The Contractor may terminate the Contract for any of the following reasons:

1. If the Work should be stopped under an order of any court of competent jurisdiction or other public authority for a period in excess of one (1) month through no act or fault of the Contractor or of anyone directly or indirectly employed by him.
2. If the County has failed to pay the Contractor within sixty (60) days after the date when any sum is certified for payment by the County Contract Representative, or
3. If repeated suspensions or interruptions ordered by the County pursuant to Section 9.3 total in the aggregate more than one hundred percent (100%) of the total number of days scheduled for completion, or two hundred and ten (210) days in any three hundred sixty-five (365) day period, whichever is less.

9.5.2 If one of the above reasons exists, the Contractor may, upon seven (7) additional days, written notice to the County Contract Representative, stop Work and terminate the Contract and recover payment from the County for all Work executed and accepted by the County and any loss sustained upon any plant or materials and reasonable profit and damages.

ARTICLE 10. CLAIMS AND DISPUTES

10.1 County Contract Representative's Resolution of Claims and Disputes; Review by Procurement Director

- 10.1.1** This Article relates to claims for additional compensation and any other differences between the parties arising under and by virtue of the Contract. Such claims are to be resolved at the earliest possible time and at the first responsible level so as to increase the possibility that such matters will be resolved without the vexation of an administrative hearing process, arbitration or litigation.
- 10.1.2** All claims, including but not limited to, claims relating to adjustments or interpretations of the Contract, payments of money, or other relief with respect to the terms of the Contract, shall be referred initially in writing to the County Contract Representative for action. The responsibility to substantiate claims shall rest with the party making the claim.
- 10.1.3** Claims by either party must be made within twenty-one (21) days after the event giving rise to the claim or within twenty-one (21) days after the claimant first becomes aware of the condition giving rise to the claim, whichever is later.
- 10.1.4** Pending final resolution of a claim, the Contractor shall proceed diligently with performance of the Contract and the County shall continue to make payments in accordance with the Contract.
- 10.1.5** The County Contract Representative shall, within twenty-one (21) days of receipt of a claim, do one of the following:
- (1) Issue a decision either rejecting or approving the claim.
 - (2) Suggest an equitable compromise of the claim.
 - (3) Provide a schedule to the parties indicating when they expect to be able to take action, which shall be within a reasonable time.
- 10.1.6** The County Contract Representative may require the submission of additional documentation from either party to facilitate a decision. In each case, the County Contract Representative will submit reasons and/or documentation supporting its action and the deadline shall be extended by the time it takes to obtain a response thereto.
- 10.1.7** The parties shall have ten (10) days from the date of the County Contract Representative's final decision rejecting or approving a claim, or suggesting a compromise, within which to accept or object to the decision. Failure of a party to accept or object to the decision in writing within such ten (10) day period shall be deemed an acceptance of the decision. If either party rejects the decision of the County Contract Representative in writing within such ten (10) day period, the matter shall be referred to the Procurement Director for de novo review.
- 10.1.8** The Procurement Director shall have sixty (60) days from receipt of a written objection by the Contractor to the County Contract Representative's final decision, or such longer period as the parties may stipulate in writing, to review the matter and issue a response in accordance with Article IX of the County of Cochise Procurement Code. During such period, the Procurement Director may require such additional documentation or testimony as deemed necessary to support his/her response.

ARTICLE 11. MISCELLANEOUS PROVISIONS

11.1 Governing Law

- 11.1.1** The Contract shall be governed and construed according to the laws of the State of Arizona.

11.2 Written Notice

- 11.2.1** Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last known business address known to the party giving notice.

11.3 Conflict of Interest

- 11.3.1** The County shall also have the right to terminate this Contract pursuant to the conflict-of-interest provisions of A.R.S. Sec. 38-511 and to exercise any and all remedies provided in such statute.
The County may cancel this Contract if any person significantly involved in negotiating, drafting, securing or obtaining this Contract for or on behalf of the County of Cochise becomes an employee in any capacity of any other party or a consultant to any other party with reference to the subject matter of this Contract.

11.4 Notice to Proceed

- 11.4.1** It is agreed that the County Procurement Director will issue the Notice to Proceed with the Work to be performed under this Agreement within twenty (20) consecutive calendar days, or some other mutually agreed upon time period, after the date of the County's Purchase Order for this Agreement, except in job order contracts where a separate Notice to Proceed will be issued for each individual job order.
- 11.4.2** The Contractor agrees that the Work shall be prosecuted promptly, regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified.

11.5 Miscellaneous

- 11.5.1** Guarantee. The Contractor shall guarantee all work under this Agreement against defects of material and workmanship as referenced in the Scope of Work.
- 11.5.2** Assignment. Neither party to this Agreement shall assign the Agreement or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any monies due or to become due to him hereunder without the previous written consent of the County.
- 11.5.3** Contract Documents. The following listed documents constitute the Contract Documents and they are all as fully a part of this Agreement as if repeated herein:
1. This Agreement.
 2. Construction Specifications, including any and all Standard, Special, Technical and Supplementary Specifications included herein.
 3. The General Conditions of the Contract.
 4. Any and all Amendments/Change Orders.
- 11.5.4** Precedence. In the event of any inconsistency between any of the terms of the documents enumerated above, such inconsistency shall be resolved by giving precedent to the terms of the above documents in the order listed. Anything in these Contract Documents to the contrary notwithstanding, the provisions of all pertinent general public laws of the State of Arizona in effect at the time of the execution of this Agreement shall be a part of the Agreement between the parties and shall take precedence over all of the other Contract Documents.

CONTRACTOR:

APPROVED BY:
Cochise County
Board of Supervisors

Authorized Signature

Ann English, Chairman
Board of Supervisors

Print Name and Title

ATTEST:

Arlethe Rios
Clerk of the Board

ATTACHMENT B



OFFER COVER LETTER

IFB NO. 14-29-FAC-03

COURTHOUSE ADDITION AND ALTERATION

The undersigned, having carefully read and considered the Invitation for Bid to provide all material, labor, equipment and transportation required to construct the Firearms COURTHOUSE ADDITION AND ALTERATION in Bisbee, Arizona does hereby offer to perform such services on behalf of the County in the manner described and subject to the scope of work, design specifications, constructions plans, terms and conditions set forth in the attached submittal.

Doing business as: ☐ an individual ☐ a partnership ☐ a corporation ☐ a limited liability company (mark appropriate box), duly organized under the laws of the State of _____.

Signatory Requirements: The Cover Letter must be signed by an officer empowered to sign such material and thereby commit Bidder to the obligations contained in the IFB response. **Further, the signing and submission of a response shall indicate the intention of the Bidder to adhere to the provisions described in this IFB and a commitment to enter a binding contact.**

No Submittal shall be accepted which has not been signed in ink in the appropriate space and signed in the following manner.

- a. By an individual doing business under a firm name, shall be signed in the name of the individual doing business under the proper firm name and style.
- b. For a partnership, the offer shall be signed in the firm name by a partner or the Attorney-In-Fact. If signed by the Attorney-In-Fact, there shall be attached to the proposal a Power-Of-Attorney evidencing authority to sign the offer, dated the same date as the bid and executed by all partners of the firm.
- c. For a corporation or limited liability company, offer shall have the correct corporate name thereon and the actual signature of the authorized officer of the corporation or limited liability company written (not typed) below the corporation name. The title of the office held by the person signing for the corporation or limited liability company shall appear below the signature of the officer.

Company, Corporation or Individual Name

Date

Authorized Representative Signature

Authorized Representative Signature

Typed or Printed Name & Title

Typed or Printed Name & Title

PRINCIPAL OFFICE ADDRESS:

Street Address: _____

City: _____ State: _____

Telephone: _____ Fax: _____ E-Mail: _____



**OFFER COVER LETTER
IFB NO. 14-29-FAC-03**

COURTHOUSE ADDITION AND ALTERATION

By signing on the first page of the cover letter the Bidder understands, agrees, and warrants:

1. That Bidder has carefully read and fully understands the information that was provided by the County to serve as the basis for submission of this submittal
2. That Bidder has the capability to successfully undertake and complete the work and construction obligations of the IFB being submitted.
3. That all information contained in the submittal is true and correct to the best of the Bidder's knowledge.
4. That Bidder did not, in any way, collude, conspire or agree, directly or indirectly, with any person, firm, corporation or other Bidder in regard to the amount, terms or conditions of this IFB.
5. That Bidder did not receive unauthorized information from any County staff member, or Consultant during the IFB period except as provided for in the Invitation for Bids package, addenda thereto.
6. That by submission of this submittal, the Bidder acknowledges that the County has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by Bidder, and Bidder hereby grants the County permission to make said inquiries, and to provide any and all requested documentation in a timely manner.
7. That funding for any resulting contract is contingent on adequacy and availability.
8. Prospective Bidder warrants that it is not excluded from participation in any Federal or State funded program, that it will notify County of any such exclusionary action and will indemnify County against any loss resulting from such exclusion.
9. To comply with County's insurance provisions, to provide appropriate indemnification for the County and to hold the County harmless from Bidder's performance of the contract.
10. That Bidder certifies their understanding and compliance with Section Five (5), General Terms and Conditions, paragraph 1.0 titled Certification.

Federal Tax I.D. Number _____

Contractor's License Number: _____

Contractor's License Classification: _____

Contractor's License Expiration Date: _____

State of Arizona Transaction (Sales)

Privilege Tax License Number (if applicable) : _____

COMPANY NAME: _____

NOTE: SUBMITTALS MUST INCLUDE THIS OFFER COVER LETTER AND ALL REQUIRED ATTACHMENTS.

ATTACHMENT C

BID SUBMITTAL - IFB 14-29-FAC-03 – COURTHOUSE ADDITION AND ALTERATION

BASE BID: COURTHOUSE ADDITION AND ALTERATION				
ITEM NO.	DESCRIPTION	UNIT	QTY	PRICE
1	Demolition and Site Clearing			
2	Foundation and Slab on Grade			
3	Concrete Sidewalks			
4	Exterior Wall Framing, Furring and Sheathing			
5	Masonry (modify front/rear wall)			
6	Roof Framing and Sheathing			
7	Roofing Addition			
8	Repair Existing Roof			
9	Entrance Canopies			
10	Exterior Doors			
11	Windows			
12	Roof and Wall Insulation			
13	Interior Doors			
14	Acoustic Ceiling			
15	Drywall			
16	Cabinets and Countertops			
17	Interior Painting			
18	Exterior Stucco			
19	Floor Finishes & Wall Base			
20	Plumbing (including fixtures & water heater)			
21	HVAC			
22	Relocate Utilities			
23	Temporary Electric			
24	Electric (including lights, switches, receptacles, etc.)			
25	General Conditions, Overhead & Profit, Bond, Insurance			
26	Supervision, Project Manager, Coordination			

27	Other-			
28	Subtotal			
29	AZ Sales Tax			
30	Permits	EA	1	\$1,500.00

GRAND TOTAL BASE BID \$
INCLUDING ANY APPLICABLE TAXES

Company Name

Representative Name

THE COUNTY OF COCHISE:

The undersigned hereby offers and agrees to furnish all material, labor and equipment in compliance with all terms, conditions, specifications, drawings and amendments in the solicitation.

1.0 Indicate if a prompt payment discount is being offered of standard net payment terms. _____ % discount if paid within _____ days or net _____ days after receipt of invoice.

 Company Name

 Address, City, State

 Representative Name

 Representative Signature

ATTACHMENT D

ARIZONA STATUTORY BID BOND

PURSUANT TO TITLES 28, 34 AND 41, ARIZONA REVISED STATUTES

(Penalty of this bond must not be less than 10% of the bid amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter called the "Principal"), as Principal, and _____, (hereinafter "Surety"), a corporation organized and existing under the laws of the State of _____, with its principal offices in the City of _____, holding a certificate of authority to transact surety business in Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety, are held and firmly bound unto Cochise County, (hereinafter "Oblige"), as Oblige, in the amount of Ten Percent (10%) of the amount of the bid of Principal, submitted by Principal to the Oblige for the work described below, for the payment of which sum, the Principal and Surety bind themselves, and their heirs, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for the COURTHOUSE ADDITION AND ALTERATION – IFB 14-29-FAC-03

NOW, THEREFORE, if the Oblige shall accept the proposal of the Principal and the Principal shall enter into a contract with the Oblige in accordance with the terms of the proposal and give the bonds and certificates of insurance as specified in the standard specifications with good and sufficient surety for the faithful performance of the contract and for the prompt payment of labor and materials furnished in the prosecution of the contract, or in the event of the failure of the Principal to enter into the contract and give the bonds and certificates of insurance, if the Principal pays to the Oblige the difference not to exceed the penalty of the bond between the amount specified in the proposal and such larger amount for which the Oblige may in good faith contract with another party to perform the work covered by the proposal then this obligation is void. Otherwise it remains in full force and effect provided, however, that this bond is executed pursuant to the provisions of Section 34-201, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of that section to the extent as if it were copied at length herein.

Witness our hands this _____ day of _____, 2014.

PRINCIPAL

SURETY SEAL

By: _____
Attorney-in-Fact

Its: _____
Agency of Record

Agency Address

COCHISE COUNTY, ARIZONA

CERTIFICATE OF INSURABILITY

I hereby certify that as a Bidder for project, IFB 14-29-FAC-03 – COURTHOUSE ADDITION AND ALTERATION project, I am fully aware of the Insurance Requirements for the Contractor and that by submitting this bid proposed, assure the Owner that I am able to produce the required minimum insurance coverage should I be selected to the successful bidder.

Should I be selected to the successful bidder and then become unable to produce the insurance coverage prior to the award of the project, I understand that my bid will be rejected and that I will forfeit by bid bond.

By: _____
Signature

Date: _____

Printed Name

ATTACHMENT - E

**LIST OF SUBCONTRACTORS AND SUPPLIERS
IFB 14-29-FAC-03 – COURTHOUSE ADDITION AND ALTERATION**

Subcontractor or Supplier	Address	Project Role	Dollar Amount

This attachment must be returned with you submittal.

ATTACHMENT - F

**COCHISE COUNTY
PERFORMANCE BOND**

STATUTORY PERFORMANCE BOND PURSUANT TO
TITLE 34, CHAPTER 2, ARTICLE 2,
OF THE ARIZONA REVISED STATUTES
(Penalty of This Bond Must be 100 Percent of the Contract Amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter called the Principal), as Principal, and _____ a corporation organized and existing under the law of the State of _____ with its principal office in the City of _____, (hereinafter called the Surety), as Surety, are held and firmly bound unto COCHISE COUNTY, in the amount of \$ _____ Dollars, for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with Cochise County, dated the _____ day of _____, 2014, for the COURTHOUSE ADDITION AND ALTERATION project, IFB 14-29-FAC-03, which this Contract is hereby referred to and made a part hereof as fully and to the same extent as if copies at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said Contract during the original term of said Contract and any extension thereof, with or without notice to the Surety, and during the life of any warranty required under the contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of conditions, and agreements of any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; then the above obligations shall be void, otherwise to remain in full force and effect.

PROVIDE, HOWEVER that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2 of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of said Title, Chapter and Article, to the extent as if it were copied at length herein.

The prevailing party in a suit on this bond shall be entitled to such reasonable attorney's fees as may be fixed by a judge of the Court.

Witness our hands this _____ day of _____, 2014.

AGENT OF RECORD

AGENT ADDRESS

PRINCIPAL SEAL

By: _____

SURETY SEAL

By: _____

WITNESS:

By: _____

ATTACHMENT - F

**COCHISE COUNTY
LABOR AND MATERIALS BOND**

STATUTORY PAYMENT BOND PURSUANT TO
TITLE 34, CHAPTER 2, ARTICLE 2,
OF THE ARIZONA REVISED STATUTES
(Penalty of This Bond Must be 100 Percent of the Contract Amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter called the Principal), as Principal, and a corporation organized and existing under the laws of the State of _____ with its principal office in the City of _____, (hereinafter called the Surety), as Surety, are held and firmly bound unto the County of Cochise, State of Arizona (hereinafter called the Oblige), in the amount of Dollars (\$_____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Oblige, dated the _____ day of _____, 2014, for the Cochise County COURTHOUSE ADDITION AND ALTERATION project, IFB 14-29-FAC-03 which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal, shall promptly pay all monies due to all persons supplying labor or materials to him or his subcontractors in the prosecution of the work provided for in said Contract, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2 of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of said Title, Chapter and Article, to the extent as if it were copied at length herein.

The prevailing party in a suit on this bond shall be entitled to such reasonable attorney's fees as may be fixed by a judge of the Court.

Witness our hands this _____ day of _____, 2014.

AGENT OF RECORD

PRINCIPAL SEAL

By _____

SURETY SEAL

AGENT ADDRESS

ATTEST:

By _____

**ATTACHMENT G – SAMPLE FORM
COCHISE COUNTY
WEEKLY CONSTRUCTION SCHEDULE**

PROJECT: _____

SUPERINTENDENT: _____

WEEK BEGINNING: _____

DAY	CONSTRUCTION ACTIVITY	INSPECTION NEEDED	TESTING REQUESTED	COMMENTS
MONDAY				
TUESDAY				
WEDNESDAY				
THURSDAY				
FRIDAY				

COMMENTS:

SIGNED: _____ **REVIEWED BY:** _____

ATTACHMENT H

Plans and Specifications are a separate document and is available for download.